COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Child custody inquiry

WEDNESDAY, 15 OCTOBER 2003

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HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Wednesday, 15 October 2003

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

Members in attendance: Mr Cadman, Mrs Draper, Mr Dutton, Ms George, Mrs Hull, Mrs Irwin, Mr Pearce, Mr Quick and Mr Cameron Thompson

Terms of reference for the inquiry:

To inquire into and report on:

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

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

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

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

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

WITNESSES

Committee met at 10.36 a.m.

CHAIR—I declare open the 15th 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. I do not really need to say that this inquiry addresses a very important issue which touches the lives of all Australians. We have about 40 minutes that have been set aside for the hearing, with 10 minutes for each witness.

HAASE, Mr Barry Wayne, Federal Member for Kalgoorlie

CHAIR—I welcome the member for Kalgoorlie, Mr Barry Haase, to today's public hearing. Do you have any comments to make on the capacity in which you appear? I know that you are aware, Mr Haase, that the evidence that you give at this public hearing is considered to be part of the proceedings of this parliament. Mr Haase has made a submission to the inquiry. You have a copy in front of you. Would you like to make a short, five-minute opening statement before I invite the members to proceed with their five minutes of questioning?

Mr Haase—Thank you very much. I am appearing in a private capacity. I have this opportunity and I take full advantage of it. I have taken extracts from two letters that have been sent to my office and I would like to present them to you. The first reads:

My partner Michael was divorced about two-and-a-half years ago, as a result of the ex wife having an affair and subsequently leaving to be with this other man. She took the children with her to live in Perth. Michael had no say in this decision, nor would he legally have been able to stop her taking his children away from him. Michael has two young daughters and a stepson he adopted four years ago. The father of this son has never paid maintenance; Michael has raised this boy as his own.

Up until recently, Michael and his ex wife had a financial agreement whereby Michael paid $500 per fortnight for the children's upbringing. The divorce settlement left Michael with some large debts that he struggled to pay off over the past two years by working two jobs. He never missed a payment to his children. His ex wife had said that she had a moral dilemma, and did not believe it morally right that Michael should pay for the son; hence the agreed amount.

Without warning, Michael's ex wife demanded that Michael pay the full child support amount. There was no reason for her decision, but under the current laws she is entitled to apply for it whenever she feels. Michael is now by law required to pay $870 per fortnight. His ex wife now receives just under $24 000 net (per annum) from Michael.

Michael earns around $82 000 as a result of being a shift worker and working in the mining industry at Port Hedland. Currently the child support Michael pays goes straight into the new husband's account. Michael has no say as to where the money is to be spent. He knows that he will not see any changes in the lifestyle of his children. They will continue to wear hand-me-downs and go for camping holidays once a year. There will be no private school education, as the new husband does not believe in the expense of it. Michael, however does.

Michael absolutely loves his children; they mean the world to him. He would do anything for them. But it appears that this is not going to be as easy for him, as he now must adjust to a lower income. Out of his $82 000 salary, he will receive just under $27 000 net. I understand that the whole argument about levels of child support was to provide a lifestyle that the children were accustomed to. If that is the case, surely the father must then have rights to be an integral part of the children's upbringing, as he would have done before the divorce. He was paying for their upbringing then, and he's paying for it now. Why should he lose his rights as a father?

I can now understand why fathers kill themselves and the children after a divorce. The child support and surrounding legislation effectively renders the fathers powerless and the mothers very powerful. These fathers love their children, but feel that they have no rights to be anything more than a payer of child support. All support and rights seem to rest with the mother. I believe some women abuse this.

The woman that wrote this letter wrote to me again a month later:

I would like to add a final chapter regarding my partner's circumstances, to show how the system can be abused. Just a day before my partner was to begin paying the extra $370 per fortnight out of his salary, his ex wife rang to say that she would accept a fortnightly payment of $600, not the full child support amount of $870. She said that she only applied for the full amount because she wanted to show Michael 'how much of a bitch she can be'. In the interim two-month period, my partner and I had anguished over the extra dollars to go her way, and the impact it was to have on our lives. But the system allows this. We have also found out that at the height of all this, the new husband bought his fourth investment property. No clues needed to know where the money was really destined to go.

May I add that, in my own submission, I highlighted a number of changes that I thought ought to take place. Primary amongst them were two major items. Having dealt with the number of constituents in my electorate that I have, I can say that a total of 13,320 people—not counting the children—are in the clutches of the CSA, which at 16 per cent of my electorate is staggering. From my association with those people I have deduced two significant things.

One is that there ought to be a direct nexus between visitation, access to the children, as decreed by the courts, and the payment of child support. If the visitation rights are abused in any way and visitation is limited, so ought the payment of child support be limited. There ought be a direct nexus, in my opinion. The other thing that I strongly believe in is that the child support payment—that is, the payment by the non-custodial parent—ought to be a taxation deduction for that payer. It ought also be taxable income in the hands of the recipient, the custodial parent, and ought to be added to any earnings that person may have, so that the correct rate of tax is paid on that income. That is really all I have to say at this stage, given the constrictions of time.

CHAIR—Thank you, Mr Haase.

Mr CAMERON THOMPSON—When you say that visitation and payment should be linked together, the obvious argument against that is that the whole purpose of this is to provide support for the children, and by removing the payments or reducing the payments you are taking away that support.

Mr Haase—At this stage there seems to be no way to insist upon visiting rights. All of the good intents of courts in making settlements amount to nothing if the custodial parent decrees that access can be interrupted for one reason or another: the children were sick, the children did not want to go, it was inconvenient, there was no transport. The non-custodial parent has no rights whatsoever to intervene in that argument. If the custodial parent is aware that there is some direct nexus between the payment that is so richly deserved, apparently, and making sure that those children are available to visit with the non-custodial parent at specified times—times as specified by the courts, possibly—there will be a little less inclination to restrict access to those children.

Mr CAMERON THOMPSON—But your concern is that the visitation rights be protected?

Mr Haase—That is right.

Mr CAMERON THOMPSON—Would you accept some other mechanism to do that, rather than by garnishee or by taking away the payments?

Mr Haase—Yes, so long as there was some practical way that, at short notice, that visitation could be guaranteed. There is not, at this stage, and I believe that if there was a general acceptance by all parties that there was a nexus between payment and access there would be greater inclination to provide that access. That is the single point I make.

Mr PEARCE—Mr Haase, thanks very much for taking the time to come along today. I acknowledge the outstanding work that you do for the people in your electorate. I want to follow on from the point that Mr Thompson has just made to you: rather than having a direct nexus between visitation and child support, really the issue is enforcement of the contact orders that the court brings down. Would you, and in your opinion would your constituents and those people you have worked with, be supportive of some sort of system that, first of all, had stronger enforcement of the court's contact orders if they are abused, particularly in the area of cumulative effect? For example, if somebody has a contact order to see their children for a weekend but that weekend access is denied, as a result of that they get double the time next weekend. It builds up, so you just do not lose it. Do you think that the people you have come in contact with would be supportive of a system like that?

Mr Haase—Yes, with the proviso that, given the solid understanding of when visits may occur and that there is a dependence on that projected schedule of visits and arrangements are made to accommodate those visits, it is very difficult when access is denied at the last minute to then rearrange future access times because double time is allowed. I have seen so many situations manipulated deliberately and, if there was in place a mandatory doubling up, I can see that that also could be orchestrated to create an impossible situation for the non-custodial parent to insist that he had the children when he was on duty for the weekend, for instance. I have seen some very powerful, and some very vicious, very malignant individuals contrive outcomes.

Mr PEARCE—We have received a lot of evidence that suggests that really the issue here is that a lot of this denial goes on largely because people believe that there is no penalty at the end of the day. They get away with it and that is why they do it. So the basic thought is that, if enforcement was stronger, the behaviour would be better.

Mr Haase—Yes, that is my view. But it needs to be emphatic and enforceable, and realised by all parties.

Mrs IRWIN—Mr Haase, thank you for your submission. It was very nice to see you in Perth as an observer of our inquiry there. On page 2 of your submission you have stated, and I think in your opening statement, that the payment of child support by a non-custodial parent should be treated as a tax deduction for the payee. Some people have suggested this through submissions to the inquiry. Do you feel that that would be a very, very huge cost factor to government? Some are also suggesting that the payment should be on net, not gross. What are your comments on that?

Mr Haase—I have clearly seen it for a long time now that the payment ought to be on gross. I do not agree it should be on net. It ought to be on gross if the percentages are not going to change. But it ought to be a tax deduction, because the non-custodial parent making that payment has no benefit at all from the moneys paid. The total benefit of those moneys is enjoyed by the children and their custodial parent, and it makes good sense that the amount of tax paid on the amount is conditional upon the base earnings of the custodial parent. The custodial parent may have no other earnings, in which case there would be some slippage of tax because the amount of tax paid on that amount would be the very base amount of tax, rather than a higher amount of tax if it was paid by the non-custodial parent. I think there is no need to change the situation from what it is currently, that it is paid on gross, but there must be some concession given. In the example that I read to you earlier, somebody on $82,000 gross pays out $24,000 in child support and by the time they have paid tax receives just $27,000—$3,000 more than he is paying to have his three children looked after.

Mrs IRWIN—Don't you think that that would be a bit discriminatory, as against a couple who were still together as husband and wife? Wouldn't they think, 'Hey, if we were separated I could get a bigger tax return at the end of the year'? This is why I suggested to you that a lot of people have stated that they would prefer to pay their child support on their net amount, not their gross amount.

Mr Haase—Well, the relief is similar. I have not analysed the effect of paying net. I concede that less tax would be collected by the ATO if the amount was paid out of gross and then tax paid on it by the receiving parent. I accept that there would be some slippage. With time to analyse payment from net, I would perhaps be inclined to agree with the proposition, but I have not analysed it and I have been firmly of the belief that it ought to be tax deductible.

Mrs IRWIN—My last question concerns something on page 3 of your submission that I found interesting. I had not actually thought about this. I think I remember seeing it in one or two of the submissions that we have received—and we have received well over 1,500 submissions. You explain the reasons why you would like to see a mediation system on a loan based system that would be similar to HECS. Two or three of the submissions I have read have suggested that even child support should be similar to HECS. What would you say about that?

Mr Haase—I am a bit of a 'dry', as you possibly suspect. I think the HECS system, by which you take what you believe you need as far as assistance is concerned and you pay it back when you are able to do so, is a good system—hence the proposition here that some sort of mediation system be on the basis of HECS to stop abuse and to stop the filibustering process, also. If each parent in a dispute had to share that cost, and accumulate the costs progressively, they would know that there was a future payback. We do these days see the abuse of many facilities that are laid on by governments, from an arbitration perspective, where people just keep on prolonging the agony of process because they can, and it is a very powerful thing to do.

Mrs IRWIN—Would you support, say, a HECS sort of program for child support?

Mr Haase—It is not something that I have thought of, frankly. The general principle I guess is a good idea. You do not have to pay child support if you do not have children. Taxpayers support the child support for families with children; perhaps there is inequity there.

Mr QUICK—Thank you, Mr Haase, for your submission. I am interested in your views on the cost of raising children in such a diverse electorate as yours. Some people are advocating that we should quantify that in dollar terms, and that there are different needs at various ages. Children aged zero to five have different requirements from those that are in high school and secondary colleges. Perhaps the amount should be different. Do you have any views on that?

Mr Haase—If we were ever to establish real equity, of course we would have a sliding scale, conditional upon age. I do not believe we could tamper with the payment tied to location. It would be far too complex. The cost of living in some of my areas is 20 per cent higher than is standard. You may not be aware, but my way of addressing that issue would be through taxation zone rebates that greatly increased to a reasonable figure that compensated one for living in a remote area. We would therefore be able to compensate the custodial parent on the amount of tax they paid by rebating if they were in a remote area. Enough of that. Simply, I do believe that, yes, a variation on the basis of the age of the child would be appropriate. However, it could be argued that, given that the amount is constant, a well-organised, budgeting custodial parent would put away today to cover the high costs of tomorrow. In reality, that does not work. It is very much a hand-to-mouth existence in many of the situations.

Mr QUICK—My other question also relates to your electorate. In the event of fifty-fifty rebuttable presumption—and we are talking about the best interests of the child as far as education goes—how do you see it working in such a diverse electorate if, for example, the non-custodial parent was living in Kununurra and the custodial parent was living in metropolitan Perth? Surely the educational opportunities are totally unrealistic in a fifty-fifty care situation like that.

Mr Haase—Under those circumstances it would be unworkable.

Mr QUICK—There are lots of fly in, fly out—

Mr Haase—It simply would not work. The courts would need the power to determine more than simply fifty-fifty access and cost sharing. For it to work they would need to have some power to restrict the movement of the custodial parent in relation to the non-custodial parent, and vice versa. Neither the custodial parent nor the non-custodial parent could simply choose to remove themselves from the other person geographically and then demand equal access. It simply would not work. There are so many fine things about the fifty-fifty deal, but there are also many hurdles.

Mr QUICK—Should we impose financial sanctions if those sorts of things occur?

Mr Haase—There needs to be some power because right now many of the rulings of the courts are frustrated by a custodial parent moving across state borders, often some thousands of kilometres away. That situation is just unbearable for the non-custodial parents but, at this stage, no-one has any power to limit the movement.

CHAIR—Thank you, Mr Haase, for your submission and also for taking the time to appear before the committee today.

[10.57 a.m.]

WAKELIN, Mr Barry Hugh, Federal Member for Grey

CHAIR—I welcome Mr Barry Wakelin, the member for Grey. I know you are aware that the evidence that you give at this public hearing is considered to be part of the proceedings of parliament. I recognise that you have made a submission. Would you like to make a short statement before members ask you questions?

Mr Wakelin—I do not propose to run through the submission because it is fairly self-explanatory. However, I want to add something that occurred to me after we prepared the submission, and that is about the review of child support decisions. We have something like five million customers in our social welfare system and we have, as you would all be aware, an ARO—authorised review officer—Social Security Appeals Tribunal and the AAT. You have an AAT option under the Child Support (Assessment) Regulations 1989, but there is room to discuss whether we should have a Social Security Appeals Tribunal type approach to some of the decisions made by the Child Support Agency. That is something that is not in my submission.

To quickly summarise the submission, it is worth mentioning that the CSA ends up with a bit over 50 per cent of the actual workload from the breakdown of relationships. So we obviously have a fairly significant group of people who are doing it themselves, and that seems to me the best way to do it. Then there are a whole lot of issues around how you might do that. My preferred option is mediation, which involves the parents and tries to get them to understand where they are at because they are carrying a lot of baggage from a lot of issues that are not related to the care of the children. There are a lot of old issues that they carry, which is the tragedy of the breakdown. Therefore, some kind of mediation with the children in mind, where the parents are focused on their caring and financial responsibilities, should be the key to which we all aspire. That is all I really want to say.

CHAIR—Thank you very much, Mr Wakelin. Are there any questions?

Mrs IRWIN—Thank you very much for your very lengthy submission. You would actually have been in the audience when Mr Haase made his statement. A question that I asked him concerned something very similar to what you have put in your submission, that the payment of child support by non-custodial parents should be treated as a tax deduction for the payee. The question I asked Mr Haase was: don't you feel this would be a very, very high cost to government, and wouldn't people who are together as husband and wife feel, 'Hey, if we were separated we would get more of a tax return at the end of the year'? Also, a number of people that have come before the inquiry with concerns about the Child Support Agency have stated that they would like to see a change in respect of net instead of gross. Would you like to make a comment on that, please?

Mr Wakelin—I think I couched my submission in terms of an option, because all of those were exactly the issues that I was mindful of, in terms of a net revenue impact—which no doubt it will have to run the test of in this parliament. It seemed that that was one option by which that inequity could be addressed. Also, the issue of access and financial incentive for those access

agreements to be honoured was part of that equation. I accept the point that you make. On the other point that you were making, about the net income, using the tax system in that way does achieve that outcome. I accept the revenue implications; perhaps that is all I could usefully argue. But it does bring greater equity, and you would hear of hundreds of examples where the impact on the payer, versus the payee, is very, very significant. That is one way through this which gives greater equity.

Mr QUICK—I am interested in your talk about mediation and variation of agreements after 12 months. You mentioned the SSAT. Do you envisage that we set up some non-judicial, non-confrontational tribunal where people can go at the end of a period of time to change things, rather than going back to the Family Court and involving lawyers in once again opening the wounds?

Mr Wakelin—That was my hope. That is exactly the kind of model that I would be looking to, I think. I would also be very mindful that the bitterness, the relationship issues, which should not be carried forward in terms of the best interest of the child, will tend to end up with this sort of body, but I just felt that removing it from the CSA, for a start, did allow some opportunity for a breathing space for CSA and for the parents themselves. So, yes, certainly reduce the adversarial nature.

I believe that the mediation system, where you encourage people to take ownership of their responsibility for their children, has to be uppermost in mind. At the moment, we go straight off to Centrelink, who say, 'Who is the father? Who is the mother?' and the system kicks into gear, so to speak. That is a very divorced system. There is no bringing together of the issues, no mindfulness of reminding parents of where they should be headed. Clearly, people are in probably just about the worst emotional state many of them have ever been in. That is my experience of it: they are in disarray. So if you got someone there a little bit more friendly, a little less adversarial—and the CSA, which has greater mediation skills—I think you would give people an opportunity to manage their affairs so as to end up in the better interests of the children.

Mr QUICK—I have one other question linked to that. We have heard evidence from grandparents about their inability to be part of the decision making process, especially in the best interests of the children. With the changing nature of our work force, lots of grandparents are care givers in the raising of those children. Yet when it comes to the fragmentation of the marriage some of the grandparents are totally excluded. Would you see them as part of this process as well?

Mr Wakelin—Very much so. In fact, I go perhaps further than what most people talk about. I think the children of a separated relationship should, as much as possible, be as naturally involved in all of those relationships as children of parents who remain together. I think that should be the aim of our society. These issues that are played out external to the best interests of the children are just so debilitating on the whole process. The more natural environment that a child can exist in, with all of those relationships—neighbours, friends, uncles, aunties, grandparents, mother and father—the better the child will be. I go so far as to say that the only reasons I can see that they should be excluded—or 'rebutted' in your terms of reference—are within the criminal code.

Mr DUTTON—Thank you very much for bringing the views of your constituents to our committee. On page 5 of your submission you say:

The link between payments and access also needs to be strengthened. The link should be precise, immediate and contain direct incentives and disincentives to encourage maintenance/adherence to the mediated agreement.

You heard Mr Haase speak before about a link—or a 'nexus' as he called it—between access and child support payments. Are you advocating that the two should be linked?

Mr Wakelin—I am mindful of the issue of who pays and where the money comes from once the money supply dries up. But there is no doubt in my mind that the more effective and efficient we can become in organising payments and the relationship of the parents with each other and the children the more often we are going to get a better outcome. So, whilst mindful of the fact that money still has to be there for people to live, I believe there has to be an incentive. As you are probably aware, under the initial legislation a statement—it did not even have to be a statutory declaration—could be made. It could contain accusations against the other parent that were totally false and it did not have to stand up anywhere. I am saying that previous experience of the inefficiency and ineffectiveness shows that we have to offer much greater incentive and much stronger guidelines as to what the parents' responsibilities are and what the agencies need to be able to do to bring an incentive to it. You have heard the issues. Mr Haase and I both have large electorates; it is almost impossible to effectively implement court decisions. It just does not occur.

Ms GEORGE—Constant concern and criticism is raised about the enforcement of contact orders. How could we structure an alternative that does not rely on lengthy litigious proceedings to give effect to a decision that has already been made? What kind of sanctions and penalties could there be, and who would impose them?

Mr Wakelin—When there is a breach—I am speaking off the top of my head—I think I would go back to my mediation model and say, 'Someone has to pay here.' Both parents may have to contribute to mediation. They have to meet and discover why this occurred. And then they would work through, as we do under Centrelink legislation, some kind of breach requirement. Those are models that have been established.

Ms GEORGE—What about the argument that, if you did that, the penalty is paid by the child that does not receive—

Mr Wakelin—That is true. I would expect that for people in those lower income levels we may be able to modify that. We know that the majority of people are in that category. But certainly where the carer has a significant income and the payments are just 'top-up money' there are opportunities to bring in greater incentives.

CHAIR—Thank you, Mr Wakelin. We appreciate your coming before the committee this morning. Thank you for having the patience to wait when we ran over time.

[11.09 a.m.]

NEVILLE, Mr Paul Christopher, Federal Member for Hinkler

CHAIR—I welcome the member for Hinkler, Mr Paul Neville, to today's public hearing. Thank you for appearing this morning. I know you are aware that the evidence you give at this public hearing is considered to be part of the proceedings of parliament. You have made a submission. Do you have any comments to make on the capacity in which you appear?

Mr Neville—I appear in my private capacity, but by way of my experience as a member of parliament in this issue.

CHAIR—Would you like to make a brief, five-minute statement? Afterwards I will proceed to questions from the members.

Mr Neville—Madam Chair, I am passionate about this issue. I think that, of all the things that occur in my electorate office, nothing causes a member of parliament more trouble than the Child Support Agency, the Family Court and legal matters that spin off from those. We have created a regime which is unnecessarily complicated, and it would not take rocket science to fix a lot of it up.

Your first term of reference is about the welfare of the children being paramount. In that regard I think there are three options. One option is a parenting agreement, which I believe is the best option. People sit down in a civilised fashion and they plan the future of their kids, their upkeep and how they will move between the two former partners. But of course there are times when, although people enter into that agreement, the loneliness of separation later sinks in and one or other party will not abide by the agreement so it has to go back to the Family Court.

The second one is shared parenting. I have some misgivings about that. In an ideal world, where the parents live reasonably close together, where the children can attend the school that is acceptable to both parents and there is a good spirit of cooperation, it works. But I think in any other circumstance it could be difficult and could impose great psychological problems on the children who spend three days with mum and four days with dad one week, and the other way round the next week, or alternate weeks. And it certainly would not work where the parents were living 100 kilometres or more apart.

The third is the Family Court ordered contact. That is the one we are all most familiar with. I think that area of the system has been badly abused, and there has been very little done to try to correct it. What happens is that you get a capricious custodial parent who decides that he or she is not going to let the kids go to the other partner. So what do they do? They find all these pathetic excuses: 'Oh, look, the kid's sick.' 'Oh, you can't deprive him of playing in the grand final,' or, 'You can't deprive her of playing in the netball grand final.' 'Oh, I can't afford the clothes if he is going to go and live in Toowoomba for the holidays,' or, 'I can't afford the air fare one way.' And in the end the kid does not go to the other parent. The capricious custodial parent, having got away with it once or twice, continues then to play the game to suit themselves. What can you do about it?

The non-custodial parent generally cannot get legal aid; it is most infrequent. Or, if they do save up the money to get the custodial parent into court, what can happen? Take the case of a capricious custodial mother. Can you fine her? No. That will affect the welfare of the kids. Can you put her on community work? No. She should be at home looking after them, or picking them up from school. Can you jail her? Of course not, because that would create a whole new raft of foster care and other things. So what happens is that these people come before the courts, they get a slap on the wrist and they go and do it all over again.

I think there is a way of stopping that. It is a very simple sanction. These arrangements have been laid down by the Family Court, or by a court sanctioned agreement. I think any custodial parent who does not abide, without good reason—by which I mean a medical certificate or a statement from a school principal—by the rulings of the Family Court should, for the number of weeks in every quarter that that child is not with the non-custodial parent, be deprived of the payment.

I heard Ms George ask whether that would not damage the kids. Possibly for the first week or fortnight it would, because most of the capricious custodial parents who do this want to have their cake and eat it too. They want to be able to punish the non-custodial parent but they want to have the dough as well. When you cut off one avenue, I think it becomes a less attractive option. If it is going to cost you $500, $720 or $1,000 not to let the child go to the other parent, I think we would find that after the first episode it would not happen again, or would happen very infrequently. It is not rocket science. I know the purists do not like it. They say that custody and support are separate matters. I think there is a merging of that, and it could go a long way to fixing it up.

Linked to that—and I know this is not strictly within the terms of reference, but I would ask you to think very hard about it because it is germane to what you are considering—is equality before the law. There is not equality before the law in Family Court matters. Legal aid agencies generally take the view that you support the one who has the best chance of success in a court action—and almost invariably that is the custodial parent. So the non-custodial parent has great difficulty in obtaining legal aid. What I would propose is very simple: the Commonwealth, in allocating legal aid to the states, put Family Court legal aid into a separate subset to which it applies a new guideline or measure. That guideline or measure would be that, in the event of a couple being of equal or near equal means—I am not talking about a rich businessman non-custodial parent and a poor mother, or vice versa; I am talking of participants of equal or near equal means—they both receive legal aid, or neither does, so that they appear before the Family Court equally represented. This would have another helpful effect: the judges, having before them a lot of unrepresented people, would start to take a more sanguine view of how they should look at these separation matters. Equally, if both partners are represented, they can place their cases on equal terms.

The worst case I have heard of occurred in my electorate. A man used to go from Gin Gin, west of Bundaberg, hitchhiking on semitrailers from Bundaberg right through southern Queensland and northern New South Wales, to the Family Court in Parramatta to represent himself. He appeared before the court, unrepresented. The mother had two barristers and the children had court-ordered two barristers. This guy was a plant driver and he had to hitchhike to Sydney to appear before a court and represent himself. That is not equality before the law—nothing like it. That could be solved very simply by just the simple rule that, where people are

of equal means, Legal Aid are instructed to say that both receive legal aid or neither do. I hope that you will put that to the minister.

Linked to that also is the federal magistracy. I think this is one of the best innovations we have had. It gets the magistrates out into rural and regional and outer metropolitan areas. Instead of actions going on for nine, 12 or 15 months—you have all had examples of this—the magistrate can issue interim orders until such time as a major action has to go back to the Family Court.

I would like to finish on the role of stepchildren in family break-ups. I accept the principle that, if you bring a child into the world, you pay for the upkeep of that child. That principle is paramount. In a perfect world, if couple A and B break up and couple C and D break up and A marries D and C marries B, the child support would go from one family to the other and there would be no disadvantage. But in the real world that does not happen. Frequently what happens when a couple separate is that the non-custodial parent is the father. He then finds a new wife or partner who also has children—and sometimes those children are not supported by their father. Their father might be a drifter. He might have left the country. He might be one of those who keep on the run ahead of the Child Support Agency and who never seem to be caught up with. He might be on a pension, unemployment benefit or a disability pension.

In that instance, those kids get nothing. I think there needs to be a change to the formula, and I suggest a very simple one. The current formula says that, when a couple breaks up, the non-custodial parent gets 18, 24, 28 or 32 per cent, according to whether there are one, two, three or four children. I suggest the rule that, for each stepchild who is unsupported or receives only the minimum level payment of $5 per week, the amount paid to the custodial parent in the first relationship be reduced by two percentage points for each child. In other words, if there were two stepchildren in the relationship, instead of 18 per cent it would be 14 per cent if there were only one child in the original relationship. If there were two children in the original relationship, it would drop from 24 to 20 per cent; if it were 28 per cent, it would drop to 24 per cent, and if it were 32 per cent, it would drop to 28 per cent.

That would not be the total recognition of the stepchildren, but it would be a partial one. I think it would go a long way to improve the quality of life of stepchildren. Let's face it, members of the committee: whether you have natural children or stepchildren in a relationship, you do not differentiate in the quality of clothing, food or outings; you treat all the kids equally. I do not think the Family Court has kept up with that very basic concept.

Those are my passionate beliefs. Some of them are very simple things; they are not rocket science. I think they could go a long way to solving the problems of the court.

CHAIR—Thank you, Mr Neville. In the interests of allowing Mrs Gash to be able to appear, because we are running so far behind and as Mr Neville is available to committee members if they want to ask questions outside of the hearing, I would ask that, if you have a question, you keep it brief. Otherwise, perhaps you could see Mr Neville at another time. He has his submission here, comprehensively. Are there any questions?

Mr QUICK—I do not have a question. I would like to thank you, Paul, for a wonderful submission. It is from the heart. I am positive that the committee will take due note of the suggestions you have made. Thank you very much for appearing today.

Mrs IRWIN—I would like to add to that. Paul, I think it was a fantastic submission. There were a number of questions I wanted to ask, which were covered in your opening statement—especially about changes to the CES. Something that I, as a member, am very interested in is a parenting agreement. I think you have covered that as well. We will take up the offer of the chair—that if we need to talk to you after the public hearing we will do so.

CHAIR—Thank you very much.

[11.23 a.m.]

GASH, Mrs Joanna, Federal Member for Gilmore

CHAIR—I now welcome Mrs Joanna Gash. Thank you for your patience this morning; we appreciate it. We know your time is very precious. I know you are aware that the evidence you give at this public hearing is considered to be part of the proceedings of parliament. You have made a statement. Do you wish to say anything about the capacity in which you appear before the committee?

Mrs Gash—I am an original member of the prime ministerial task force into child support and also a former sole parent for many years—so I can speak on both sides of the fence.

I think all has been said, particularly by Paul Neville. I thought his was an excellent submission. I want to emphasise the problems we face, particularly in Gilmore and certainly with legal aid. As Mr Neville has said, the wife is usually the person who gets the legal aid and the man does not. Coming from a low socioeconomic area such as Gilmore, the men do not have high incomes and the wives are usually on governmental support. That is an issue that I think we need to quickly address. I can say on the public record that I know of at least three suicides in my area caused through separation from their families, and particularly from their children. That concerns me greatly.

It is by no means the single biggest issue in my electorate, as I am sure many of you will have found from evidence given to you. It is also caused by the fact that we have HMAS *Albatross*. Of course, many of those families have been married not once or twice; in some cases there are three families and three lots of children. That in itself is a cause for concern.

The issue of the wife being able to take the children away without the husband's knowledge I think needs to be quickly addressed. That is the biggest issue I have: children being taken across borders, where the father is unable to see them. It might sound rather strange from a female, but I am on the side of men here, because I have seen the destruction it has caused to the men in my electorate. I am terribly concerned about that.

I think the government has a responsibility, to a degree—I say this quite openly—for men's support groups. I do not think there are anywhere near enough support groups for men as there are for women. I believe mediation helps; I have seen it work with men. They simply need to talk—and not necessarily to a female. They need some form of support from their peers.

Grandparenting is another very big issue in my electorate. I had a meeting with a number of people in my electorate. I did not realise the problem was as severe as it is. Grandparents do not know of their rights. They must go through the exercise of facing the fact that their children have been failures, and then take on their children's children. They just do not know where to go. I think we have failed a little in that regard. We need to emphasise that there are support groups for grandparents. The sooner we do that, the sooner I think we can resolve some of these issues.

AVOs—another strong issue in my electorate—are very easy for women to get and very hard for men to defend. I think that needs to be addressed as well. I think it is far too easy for a female to get an AVO. As I said earlier, mediation works and I believe it can be an alternative to court. I hope that is emphasised in your recommendations.

The rest has probably all been said. I am happy to answer any questions, but I know we all have time constraints. However, I want to emphasise that I am passionate about this issue—and the men are. I have been on the previous committees and I have seen the heartache. We have made changes for the better, but I believe we need to go one step further—and that is with the Family Court.

Mr CADMAN—I do not have any questions, but I think the summary is really interesting, from a practical point of view. Thank you for coming.

Mrs IRWIN—I would like to thank Joanna for her submission. You have stated in your submission that fathers claim they are paying money to support children but that money is being spent on other things. Some people have suggested—and I think this is going to be very hard to do—that the fathers who are paying child support would like to be told exactly where that money is going. They would like to know whether it is being spent on food, clothing, education or whatever. What sorts of changes would you like to see with that? Would you like to see some kind of itinerary given to the paying father? It would be very hard.

Mrs Gash—I do not know how you would police that. I think it is almost impossible. I am sure you have had cases of people coming into your electorate and saying, 'The children come to me on a weekend with no clothes, shoes or anything. We have to buy them something before we can take them out, whereas we pay X number of dollars per week for their maintenance.' That is an added expense for them. I do not know how you would police that. At one of the public meetings we had, a guy brought in the old sandshoes that his kid came in every weekend, and he said the child came with no underwear. It was heartbreaking. I do not believe fathers make these things up. I believe that men, as well as women, are very conscious of their children's needs. I have never had, in my electorate, a man come in and say that he does not want to pay child support. Fathers just want to see their children. I think you need to understand that.

Mrs IRWIN—I agree that there are not enough men's support groups out there. I remember one gentleman I was speaking to after one of the public hearings. He had to leave an abusive wife. You do not usually hear of that. He had to flee the family home and he said there was nowhere to turn. There was not even a men's refuge for him to go to, whereas women have that. He asked that there be more support groups out there for men, and even a refuge, like women have.

Mrs Gash—I am not saying every woman does this but, having been in the situation myself, I know how easy paybacks are on the woman's side, with the children. Enough said.

CHAIR—Thank you very much, Mrs Gash. We appreciate your coming this morning.

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

That submissions numbered 1587 from Mr Neville and 1588 from Mrs Gash be accepted and authorised.

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

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 11.30 a.m.