COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Reference: Exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

MONDAY, 25 JULY 2005

CANBERRA

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **http://www.aph.gov.au/hansard**

To search the parliamentary database, go to:
http://parlinfoweb.aph.gov.au

HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

Monday, 25 July 2005

Members: Mr Slipper *(Chairman)*, Mr Murphy *(Deputy Chair)*, Mr Cadman, Mrs Hull, Mr Kerr, Mr Melham, Ms Panopoulos, Mr Price, Ms Roxon, Mr Secker, Mr Tollner and Mr Turnbull

Members in attendance: Mr Cadman, Mrs Hull, Mr Kerr, Mr Murphy, Mr Price, Ms Roxon, Mr Secker, Mr Slipper, Mr Turnbull

Terms of reference for the inquiry:

To inquire into and report on:

The provisions of the draft Bill.

Specifically, the Committee will consider whether these provisions are drafted to implement the measures set out in the Government's response to the House of Representatives Standing Committee on Family and Community Services inquiry into child custody arrangements in the event of family separation, titled Every Picture Tells a Story, namely to:

a) encourage and assist parents to reach agreement on parenting arrangements after separation outside of the court system where appropriate

b) promote the benefit to the child of both parents having a meaningful role in their lives

c) recognise the need to protect children from family violence and abuse, and

d) ensure that the court process is easier to navigate and less traumatic for the parties and children.

The Committee should not re-open discussions on policy issues such as the rejection of the proposal of 50/50 custody in favour of the approach of sharing of parental responsibility.

WITNESSES

Committee met at 9.30 am

QUINLAN, Mr Francis Gerard (Frank), Executive Director, Catholic Welfare Australia

ROOTS, Mrs Margaret, Director, Membership and Network Support, Catholic Welfare Australia

CHAIRMAN (Mr Slipper)—I declare open this hearing of the House of Representatives Standing Committee on Legal and Constitutional Affairs inquiry into the exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005. I welcome you all here today. The Attorney-General has asked the committee to examine the provisions of the exposure draft to determine if they implement the government's response to the report of the Standing Committee on Family and Community Affairs titled *Every picture tells a story*. The committee has already been explicitly directed not to re-examine policy issues already canvassed in the previous inquiry, which was a substantial inquiry that toured right around the country getting advice. The committee is grateful that witnesses have been able to attend at such short notice and make submissions where possible. We had hearings in Sydney and Melbourne last week, and I would like to thank those people who are able to appear before the committee today. The Attorney-General is particularly keen to get the amendment legislation to the parliament as soon as possible. Therefore, I apologise to everyone who has made a submission, because the time frame for the receipt of submissions has really been quite tight.

I now welcome representatives from Catholic Welfare Australia. Although the committee does not require you to give evidence under oath, I would advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament—we might have to lock you up in the cells under the building! The committee has received your submission and it has been authorised for publication. I would like one of you to make a brief opening statement of 10 minutes duration and then we will proceed to questions.

Mr Quinlan—On behalf of Catholic Welfare Australia, I thank you and the committee for the opportunity to appear today and to present evidence on these important issues. We would like to preface our remarks by saying that Catholic Welfare Australia represents, at its heart, Catholic community organisations. We are not lawyers and we are not from the legal discipline—in large measure, we leave the technical legal arguments to those who are better qualified to make them—but what we do bring is over 80 years of experience dealing with couples and families in distress across the nation. From a Catholic perspective, family is the fundamental unit and building block of our society. Families are to be supported not just because they nurture human life but also because the sharing and cooperative values that are fostered by family are the same values that operate for the common good throughout the community.

Whilst our members invest great effort in education and in counselling to build strong family relationships, we are also tragically aware of, and engaged in, the reality of relationship breakdown. We are steadfastly committed to supporting families during this process and are particularly committed to ensuring that the best interests of any children involved are of paramount concern when making decisions regarding the future structure of the family unit. In the last 12 months, Catholic Welfare Australia member organisations collectively administered in

excess of $71 million worth of direct family programs. Approximately one-sixth of these were funded through the Australian government's Family Relationships Services Program, or about $15½ million from the $69 million pool. The remaining $55 million was funded through state government funding, church contributions and client fees. Catholic agencies assist more than one million Australians every year. The Catholic church has a long history of being instrumental in the development and formulation of relationship and family law policy. As far back as the 1940s, when marriage came under state jurisdiction, Monsignor McCosker negotiated with the New South Wales government for funds to provide what was then called marriage guidance. This counselling was provided independently of the court system and these programs were the precursor to many of the programs we know today.

In general, Catholic Welfare Australia have welcomed the changes proposed by the Australian government. Whilst we welcome the overall thrust of the legislation, we are concerned that we are about to witness a significant shift in the way counselling and mediation services are provided in the family services arena and in the community sector. The community sector has been extremely successful in achieving results for many years. There can be no doubt that the proposed legislation will change the face of community sector programs. In this context, Catholic Welfare Australia have a number of concerns.

We begin our assessment of the proposed changes with this question: do the proposed changes enhance the best interests of the child? As I said, whilst we support the overall direction of the amendments, it seems that some of our most disadvantaged children will not reap the full benefits of the proposed changes. In circumstances where the courts make determinations—for example, where domestic violence and/or child abuse has been a factor—there appears to be an assumption that the court determination and the penalties that underpin it are all that will be required to achieve compliance. We know from our own experience that this is a vain hope. Where parents are self-determining, the amendments wisely require that dispute resolution procedures be established by the parents entering into agreements. This is a realistic means of anticipating and preventing problems. We know, however, that those who are the subject of court determinations frequently fail to comply and often remain in dispute. Non-punitive strategies to support compliance such as case management, education and supervised access ought to be considered at the time the court determinations are made in order to foster and support future compliance. Such intervention ought not to be delayed until the court determinations break down. Children in these circumstances are amongst the most vulnerable and deserve better.

Similarly, we ask what rural and remote children are offered by these proposals. The current proposals are exclusively metrocentric—that is, they revolve around metropolitan and large regional centres with significant resources and a diversity of services available on call. If our rural and remote children are to be assisted, we must develop programs and interventions that are designed specifically for their circumstances and resourced appropriately. Metropolitan services adapted to fit into a remote or rural setting are unlikely to yield significant benefits.

We recognise that the law requires clear definitions and precision of language. However, this precision is not matched by the murky reality that our staff contend with every day. As the legal system shifts further and further into the community sector, our staff, most of whom are professionals in disciplines other than the law, are increasingly required to be the front-line interpreters of the legislation and its requirements. This changes the nature of their work. Our staff are frequently the interface between the legal system and the public, and therein lies a

problem. This legislation is prescriptive about how particular advisers, as defined by the legislation, will operate. Their actions and interpretations of law will be judged by the court system, the legal fraternity and members of the public.

Given the longstanding experience of the sector identified earlier, and given the centrality of the position community based workers take on the front line of family law, it is extraordinary that there are no proposals for formal representation of the community sector in the design and structure of the new system. Whilst we welcome opportunities for input into inquiries such as this one, formal structures must be developed to maintain input on an ongoing basis. As recently as last Friday, for instance, I learned that the NSW Council of Churches, which represents a raft of community based providers, had only just become aware of this inquiry. Formal structures and programs must provide opportunities for sector development on a systematic and ongoing basis. This is particularly true if new providers are to deliver services.

This legislation deals specifically with separation. For organisations like ours, that is only part of our work, investing considerably, as we do, in education and preventative strategies. Our membership has had to fight hard over the years to protect privilege in their work. We note in the proposed legislation that, when speaking about privilege, the legislation seems to refer to any court. Our experience in developing case law tells us that that is no longer so and the immunity afforded to our workers on behalf of their clients relates only to the jurisdiction of the Family Court. We would appreciate clarity regarding the application of privilege as proposed by this legislation.

Catholic Welfare Australia is absolutely committed to working with Australian families as a dynamic and creative network of service providers. We are extremely confident of our ability to continue to deliver excellent services to the many hundreds of thousands of Australian families we assist each year. We are less confident that the proposed changes will adequately take account of the vast expertise of the community sector and the complex and uncertain environment in which its members work. I thank you for your time and interest today and look forward to exploring the issues presented in our submission.

CHAIRMAN—Thank you. At the outset, in your experience have you seen a lot of false allegations of abuse and violence made by parties to these sorts of proceedings involving child custody, principally to outmanoeuvre the ex-partner, as far as possession or custody or access are concerned?

Mrs Roots—There are a lot of allegations, but the issue is not the allegations. Part of the ongoing war between couples involves them trying to vie. It will be interesting to see how the framework of the legislation—which states that if allegations of abuse are made then the matter will proceed directly to the court—gets played out. Whether it will increase the number of allegations, I do not know, but I think it misses the central tenet. The issue that we should be looking at is how we resolve conflict, not who makes what criticism of the other party. My concern about this legislation is that it is based more on a decision regarding who is right or who is wrong and, to me, that tenet still comes through in the legislation. We are not looking at the issue of how we resolve conflict. Our children will only be safe or well taken care of if the conflict between the parents is addressed.

CHAIRMAN—Most people would agree that how we resolve conflict in our society is a very important issue. I understand that, from the perspective of your organisation, you would see so much of it—and you probably do more to help resolve it than anyone else in similar organisations—but the purpose of the Family Law Act is to try to regulate the rights and responsibilities of parties, including children. I think the reason that the bill focuses on who has committed the violence or the abuse is relevant, because it assists in determining whether there will be shared parenting, or the degree of shared parenting; the degree of contact; where it is appropriate for someone to live and whether there should be unsupervised access. You said that a lot of allegations of abuse are made which may not be true, as part of the manoeuvring between the parties to a marriage which is breaking down or has broken down. Is that a fair comment?

Mrs Roots—That is a fair comment. However, if allegations of abuse are made you have to take them seriously because, as professionals working in the field, if you do not take them seriously you are in fact being an abuser yourself. It is a double-edged sword.

CHAIRMAN—I do not disagree with you. Allegations have to be taken seriously, but we have had other evidence before the committee that I found a little unconvincing—namely, that it is very rare that anyone would make a false allegation of abuse. That seemed to be entirely at odds with my own experience, through my office and from what colleagues have said to me. I value your point of view and that was why I pressed you on it. Do you think the bill has a mechanism in it to ensure that the welfare of the children remains paramount in circumstances where there are allegations of abuse, some of which could be false?

Mrs Roots—As Frank said in our opening address, there is a big hole in the legislation. We are not looking at and working with the families when these allegations are made to find ways that they can deal with the conflict. There needs to be a whole raft of strategies to prove that the children are safe in these situations. We need to work with families. I am hopeful that if false allegations of abuse are made they would be teased out when the situation was looked at. I do not see that protection in this legislation.

Mr Quinlan—The principal concern we would have around that is that we are not sure how much of that protection can in fact reasonably be expected to be afforded by legislation.

CHAIRMAN—That is a fair comment.

Mr Quinlan—The legislation can only take us so far. Our principal concern rests and remains with where this legislation leaves people at the point at which the community sector and organisations like ours—there are a broad raft of them—take on the ongoing maintenance, assistance and case management of people who are realistically going to be involved in ongoing conflict. Family relationship centres need to introduce a relatively brief intervention at the pointy end of the proposals. But we are not convinced that there are sufficient structural arrangements in place to ensure that the impact of the family relationship centres on the broader Family Relationships Services Program is adequately dealt with. I am not sure how much of that can be achieved through legislation. That is going to be as much about how the policy is implemented on the ground.

CHAIRMAN—Do you have any concern over the length of time it is going to take to roll these centres out? You mentioned regional Australia in your opening statement.

Mr Quinlan—Given what I just said, the timetable for the roll-out is less important than the adequate monitoring and development of those procedures and policies as they are rolled out. Realistically, a staged roll-out gives us some time to monitor and evaluate the impact of the family relationship centres and the way in which they operate and the sorts of commercial models that are used to develop them and so on. The staged roll-out approach gives us some time to do that, provided that ongoing monitoring is occurring as they are rolled out.

CHAIRMAN—It also enables the expertise to be acquired in an orderly way. It would be very difficult to set up all of these on day one.

Mr Quinlan—Indeed. That is another of our concerns. We already operate a broad family relationships services program across the country. The workers who are involved in those programs require an increasingly high level of skill, expertise and subtlety in the way they work. The family relationship centres, it seems to us, are likely to require the cream of the crop, as it were, in terms of the workers who will be required to work at this front line. As part of that process I have outlined, there is an ongoing issue in terms of work force shortages and skills shortages among that work force. That will be an impact that the roll-out of the FRCs will have to take into account.

CHAIRMAN—I have a couple more questions. Then I will invite my colleagues to grill you.

Mr Quinlan—Thank you!

CHAIRMAN—We will manoeuvre the white light. I do not know whether Hansard looks after that as well! The committee has been specifically instructed by the Attorney not to reopen all the issues that Mrs Hull's committee looked at, and we have endeavoured not to do that. However, we have to look at the draft bill and see the extent to which it represents the recommendations the government accepted from Mrs Hull's committee report. To what extent do you think the bill picks up the recommendations which were accepted by the government from the *Every picture tells a story* report? In other words, how faithfully does the legislation follow the government's response to that inquiry report?

Mrs Roots—It picks up many of the issues. Our difficulty is with how they are going to operate. If I can go back to your question about allegations of abuse, one of the difficulties with the legislation is the interface between the federal laws and the state laws around child protection and the operational issues that our workers work with. Trying to manage children who fall into one category while their determination is made in another setting is quite difficult for our organisation. So it is more the operational end of how they are going to achieve the intent of what was behind the recommendations of *Every picture tells a story* that causes us a deal of concern.

CHAIRMAN—I know you outlined areas of concern, but what would be your principal area of concern about the bill? What is the area that you are most concerned about?

Mr Quinlan—It is where the bill becomes operationalised. I am not convinced yet that there are solid structures in place to assess, monitor, evaluate and consider the interface between the application of the bill and the broad raft of existing services that are on the ground at the moment. That is going to be an ongoing challenge for us and is reflected in some of the concerns

we raised in our submission, our opening statement, that a lot of this is very murky territory. It is murky because it is between federal and state legislation. It is murky because it is between specific divorce counselling, if I could crudely call it that for a moment—

CHAIRMAN—It is murky because it involves people's relationships.

Mr Quinlan—and broader family relationships. It is murky because it is the most intimate of human experience. So it is a challenge on an ongoing basis to ensure that we have a broad family relationships sector that adequately deals with some of these issues.

Mr MURPHY—Mr Quinlan and Mrs Roots, you can be sure that I am not going to grill you but I am going to seek clarification on a couple of elements of your written submission, Mr Quinlan. First, I direct your attention to section 63DA(3), where you express concern in relation to the definition of an 'adviser' as defined there as a legal practitioner, a family counsellor or a family dispute resolution practitioner, and a family and child specialist. You submit that Catholic Welfare Australia believes in other terms like 'counsellor', 'mediator' or 'conciliator'. Certainly it cannot be 'mediator' because, if you are going to have an adviser, a mediator has no interest, and has to get an agreement and an outcome so people can move forward. I would think that the other two suggestions—'counsellor' and 'conciliator'—are covered there. A family can be counselled by a family dispute resolution practitioner. I am wondering what your concern is with those definitions. I think most people in the community would know what a legal practitioner is, or a family counsellor.

Mr Quinlan—Margaret may be able to clarify this, but the concern for us is that the legislation applies specific definitions and responsibilities and roles according to agreed definitions. They are not necessarily and easily roles that can be clarified and separated by our workers in programs on the ground. They will often be taking on roles under this legislation but, as Mrs Roots said, they will also have roles that are defined under state legislation and they will also have common names. So it is our concern around this notion that we can quickly and easily separate out those roles within our programs.

Mr MURPHY—But would you want to add others to the list, like a psychologist or a social worker, for example? Do you want to be that prescriptive?

Mrs Roots—No. It comes just from the operational concerns about who is actually in the pool and who is out of it when you have people working across programs—part of the work is under this program but part of the work is under another—and the clarity around that. We understand from the law that the law has to define and be precise in the way it describes people. We are just concerned about the translation of that in terms of our work force and in terms of the Australian public, where those distinctions are quite meaningless. Certainly, there are practical issues. The reality is that out in rural Australia you have one person who probably comes under most, if you are lucky and you have a very well-qualified person. They certainly would have to take on the roles of most in rural Australia. You would not get that range of people operating in rural Australia.

Mr MURPHY—In relation to 60J(2) and the determination of risk of abuse, you say the legislation gives no indication of what constitutes risk and as such leaves risk open for liberal

interpretation. How could we be more prescriptive or specific in relation to the term 'risk'? If you say to someone, 'There is a risk,' they probably understand what you mean.

Mrs Roots—Again, it comes down to the operational realities of working in this field; of trying to decide whether you are putting a family at risk, particularly in violence issues. The advisers have to decide around violence because those people will be streamlined to the courts. Sometimes the actual bringing out and naming of a situation where violence is occurring is a very risky operational exercise and requires great finesse. The way the legislation is written is that you do the assessment and you move them to the courts. In doing that you can actually be putting families at risk, because any practitioner would build in a lot of sureties about getting that first assessment, or even marking it, because a lot of perpetrators of violence—and we notice this from our caseloads—do not see that they are in domestic violence situations; they did not want to know that. The actual calling and naming of domestic violence situations is one of the most difficult things that practitioners actually have to do, and create a safe context. By labelling it as a risk case and moving it, you can actually be delivering a message without the surety of how you move it from the self-determining stream to the stream in the courts where it will be determined for them.

Mr MURPHY—Do you have any ideas about another definition other than risk?

Mrs Roots—I would like to see spelt out at some length what they actually mean by that, taking into account there is a huge number of cases that could fall between that where it can go one way or the other. We know from practical experience that, if you do that badly, you very often get your first incident of physical violence. The emotional and the other strategies around violence can be occurring, but if that is done badly and if you do not have skilled practitioners doing that work then you are likely to get your first incidence of physical violence happening. That is my concern—that the risk is so open.

Mr MURPHY—Thank you.

Mr CADMAN—From reading your submission, I wonder whether you have any concern that your centres may not fit within the definition of a centre if you are not one of those 65. Is there room for people to operate outside that and still fit the criteria outlined in the legislation?

Mrs Roots—I have no doubt that our services will be doing this work, whether they are one of the 65 or not, because 65 centres are going to be in 65 places. We have been there; we do this work anyhow. We will continue to do this work. I have concerns about two things: (1) we will do it and we will not get the funding that goes with it; and (2) the streaming of people into the family relationship centres. We know that 49 per cent of clients who come to Catholic welfare organisations pay between $1 and $10—we have a value that says we will not turn anybody away. The streaming of clients through services will be a viability issue for some of our services. How to manage those clients who are more affluent and are streamed off into services is a real concern to our organisations because we will not turn away from looking after the marginalised and disadvantaged. But there is only a certain length to which you can go when you are not getting the dollars in to keep those services going.

Mr CADMAN—Do you think that two categories or classes of centre may arise from this process? I am not necessarily reflecting on your own, but you have the so-called approved 65 and then others may not be seen in quite the same light.

Mr Quinlan—Indeed. It has been very uncertain to us and I think to all those involved. It is uncertain precisely what model the 65 centres will adopt in the end—whether there will be a lead agency with funding to manage other agencies in a geographic area, a consortium of agencies or a national approach. There is a great deal of uncertainty about that. It has great potential to have a major and detrimental impact on the sector more broadly if that process is not managed appropriately and carefully. As you say, and as we said at the outset, this provides necessarily a small and specific focus on some of the issues that are involved in family relationships, but there will always be a broad raft of other issues that are related and which, in some cases, must be dealt with separately or by other agencies. It is of great concern to us.

Mr CADMAN—Do you already have family counsellors and family dispute resolution practitioners in your centres or is this in addition to what you currently do?

Mrs Roots—No. That is what we already do.

Mr CADMAN—Those two different categories of helpers are there to help people who come in?

Mrs Roots—In some centres the distinction would not be like that because dispute resolution practitioners would perhaps also be counsellors. The public does not come in. They do come in to some of the services that have been funded as conciliation services because we have set it up so that they stream through that door. And, yes, we do have conciliators or mediators because we have separated them off. But the bulk of the people come through the door just with problems. In fact, you sort them out and you stream them. A whole stack of our staff actually are conciliators, mediators and counsellors. Certainly in rural Australia you need those three bows to your expertise because they just do not have the luxury of having somebody specialise in one or the other. Our fear is that these people, who are our most experienced and are highly talented, are going to be at high premium for these centres. We are worried that we are going to see them seduced off into the centres that are actually funded. So we will then have to retrain the next group of people with these sorts of skills.

Mr CADMAN—Within your centres, would you have somebody who could be described as an arbitrator? I see that in the legislation there is a role for arbitrators. Would you see that as part of your function as well? Perhaps it would not be on the same premises, but along the lines of saying, 'If you two follow this course of action, this is where the court is going to lead you. If you would like me to, I am prepared to arbitrate.'

Mrs Roots—I would not see that as a function that we would recommend, although no doubt in some situations statements like that would be made to people. But we would not actually say that we have arbitrators.

Mr CADMAN—Finally, with respect to the provisions for Indigenous and Torres Strait Islander children regarding the risk factor—I am interested in what you said about that—it says:

In child-related proceedings concerning an Aboriginal child or Torres Strait Islander child, the court may, for the purposes of section 61F:

(a) receive into evidence the transcript of evidence in any other proceedings before:

(i) the court; or

(ii) another court; or

(iii) a tribunal; and draw any conclusions of fact from that transcript that it thinks proper; and

(b) adopt any recommendation, finding, decision or judgment of any court ...

That relates particularly to that section on abuse and risk.

Mrs Roots—I have grave concerns about the appropriateness of the framework as it stands for our Indigenous people.

Mr CADMAN—My question was: shouldn't that relate to others as well? One of the things we constantly hear is the court's inability to get real facts. Everybody makes assertions and none of them are ever tested. So it is a matter of building the best story and hoping the court hears you. We are hearing that the court lacks facts. One way of getting facts is to allow the court to look at what other tribunals have decided based on facts. They then use the state jurisdiction.

Mr Quinlan—I do not think we would have a specific comment on that from a legal aspect. We could certainly take it under advisement.

Mr KERR—I take you to the point you raised about privilege. The first issue I raise is about your concern that the provision in 10D is not sufficiently broad to cover all courts. Is there any experiential base that leads you to that concern? The words, on their face, seem to cover not only federal courts but state courts, royal commissions even and other commissions of inquiry.

Mrs Roots—This was a question we had. Our experience is that our workers are being subpoenaed more and more frequently. The area to which privilege actually applies now has been reduced down to the Family Court. When I read that in the legislation, and when it said 'any court', I started to think: is this really saying that it is any court, or is it where we have actually got to? It seemed to be going back to where we originally started, and case law has now reduced it down to the Family Court.

Mr KERR—Could you refer me to that case law? I do not mean now but if you could follow this up that would be appreciated. Even the provisions which are to be repealed refer to privilege extending in relation to admissions made to counsellors to any court, whether or not exercising federal jurisdiction, and also to other bodies. I am puzzled how it could be that this is being read down. Obviously, if it has been read down, it is an issue we need to look at because the language essentially adopts identical language that is currently in the act in this regard.

Mrs Roots—It was certainly the practice. As this has evolved over time, now we think it only relates to the Family Court. It was just a surprise to me. I thought that we have been through the

experience of getting it clarified over and over again. It seemed to be broadening it out. I just thought it might have slipped through, actually, so I raised it.

Mr Quinlan—We can follow up some of those cases.

Mr KERR—If you could because obviously that is important. The other thing is: if you look at 10C, I am wondering whether or not this imposes a great difficulty on counsellors. It has a two-stage process. Firstly, it says that counsellors are not to disclose communications whilst conducting family counselling. Then it puts a subset of instances where disclosure can be made with consent, which I have no difficulty with. But then in subsection (3) it provides a discretionary basis for disclosure in relation to instances where it might involve protecting a child from harm, preventing or lessening a serious and imminent threat to the life or health of a person, reporting the commission of an offence involving violence or intentional damage to property et cetera. Does this impose too great a burden? Surely it would not be unreasonable to provide at least a prescriptive set of circumstances where obligation was expected. Hospitals, for example, have a set of circumstances where they do disclose. Health privilege extends to a number of areas, but there are instances where disclosure not only is discretionary but is in fact—

Mr SECKER—Compulsory.

Mr KERR—Yes. I am just wondering whether it would be clearer if the law were a little more directive as to the circumstances where disclosure is appropriate. The circumstance that I imagine is that you go to a counselling session and the counsellor gives you a broad summary of the position that anything said there remains there and may advert to some exceptions, by consent or when it involves a breach of the law. I would have thought that it would normally be expected of a counsellor that they would report some admission made that was likely to indicate that there was an imminent and serious threat to the life or health of a person.

Mrs Roots—I think practitioners would love clarity around that. There are instances where they would dearly love to be able to know that are not walking the tightrope around this. So any clarity that we could get around that would be good. As far as I know it has been on the agenda for five years, and we never seem to get any further, yet our workers actually end up being at the doors of the courts to contest it to try and get clarity. I think they would love the legislation to be clearer around the extent of privilege and the limitations on privilege.

Mr Quinlan—I refer to our earlier comments as well and say that I am not sure, frankly, how much of that clarity can be offered by the law. They would welcome the clarity that can be offered by law. We would also welcome structural institutions within the application of this law that foster an ongoing discussion between counsellors, community workers, the legal fraternity, lawyers and so on, because one of the things that we have encountered in the past is that the judgment calls that are made by counsellors are eventually referred to, assessed or judged in courts of law in different ways. One of the fundamental shifts of this program of legislation is to move, in a sense, parts of the legal system further out into the community sector. To do that without an ongoing dialogue between the community sector and the legal system, which to date have traditionally operated in very different environments, is going to be a risk, both for our workers and for the law.

Mr KERR—To follow this up, sections 10C and 10D are directed to different things. Section 10C is directed to when a family counsellor can basically tell the police that they have concerns about some matter. It would still not be available to be used as evidence in court, but at least the police or some other appropriate agency would be advised that there is risk. Look at 10C and 10D. Regarding 10D, could you provide us with the case law that you say cuts back on what is, on its face, a complete protection and tell us what you think should be the framework? That would assist us. I do not know whether we are going to go into a detailed examination of this—I do not know whether my colleagues would be mindful to do so, because it is not really one of the things that emerged directly out of the report—but, with your having raised it, this seems to me to be an opportunity to examine it and, if it can be conveniently improved, to do so.

Mr Quinlan—Sure.

Mr KERR—The issue around access centres came out of our hearings last week. We heard quite disturbing evidence that there is no accreditation process for the operation or management of access centres and that some are being set up in a quite informal way with standards that we would perhaps not have expected to apply in relation to the professional management and, indeed, the physical safety of them. Does your organisation operate any access centres? Do you have any advice for us that we might take into account in relation to the management, the operation and the accreditation of access centres?

Mrs Roots—We operate four child contact centres. Certainly in rural Australia every one of our Centacare venues around the country would be asked by the public to act as handovers or to do supervised access. We have encouraged our Centacares not to take on this role because it places them in too vulnerable a position, in recognition of the parameters you need to put around to make child contact centres safe. So we would support the accreditation of the centres. Their staff needs to be highly skilled. I think when they were conceived it was thought you could get child-care workers to do this role. We know that is not in the best interests of the children who pass through these centres, so we would endorse accreditation and high standards for these centres wholeheartedly.

Mr Quinlan—Also, it flags an echo of an issue that is evolving in the sector around the role of industry representative bodies and standards more generally. We have a program—and Margaret is the director of the program—for quality assurance of our agencies nationally. It relates not just to the FRSP but to broader issues of quality and so on. We do have a concern about the apparent shift away from IRBs. It may leave some organisations vulnerable to falling outside of those nets of accreditation. We have no specific opposition to broadening the agencies that might be involved in programs, but we do have a concern that the maintenance of quality standards in those programs is going to be a challenge without some sense of there being peak organisations who can support that.

CHAIRMAN—We are starting to run out of time, but we do have some more questions.

Mr TURNBULL—Mr Kerr has dealt with the matter I wanted to discuss.

Mrs HULL—I have three questions. Firstly, thank you for your submission. It is quite comprehensive. You have indicated that we do have a difficulty with the interface between the family law structure and the state structure—that is, between the Commonwealth and the states.

You could take these questions on notice and come back to us if you want, but I would ask you to suggest how we could achieve a better interface between these two areas. One suggestion—or something that was raised in the hearings last week—was about an inquiry of the last committee. They recommended having a tribunal with an arm to investigate issues of domestic violence, abuse et cetera. Because the tribunal idea was not accepted and recommended, would you give consideration to having an investigative arm not replicating the current state service providers such as DOCS and others but utilising some other services?

The second question is: what do you think is required to establish effective family relationship centres to cover off the concerns that you have raised about channelling domestic violence and other issues through to a Family Court area if it were assessed that a family were not able to effectively utilise the beneficial services of a family relationship centre? How do you think that should be put in place, and what structure should be utilised in order to ensure the very best outcomes for all families?

That leads me to my third question, which is about my major problem. We seem to be coming back over all this and focusing on this again. It is quite right that we are protective of anybody who is in danger of violence or abuse or anybody who has raised areas of concern there, but what we are trying to do is to establish a better and more equitable function for everybody under the Family Court. Again, we seem to be absolutely homing in and focusing on one area alone, so I ask you: how do we deliver the best outcomes to the majority of children in families without them being frustrated by legislation that is of course necessary and that is designed to protect victims of family violence, domestic abuse or abuse of children?

How do we least frustrate the majority to bring about a good outcome for the children of all families rather than just in the violence area? I am quite concerned about this. We are becoming so prescriptive again and we need to have clear and concise directions for everybody. There is not one person at this table who would want to see anyone exposed to any violence. But there is a great number of people out there who are not at risk, who just want an easier framework within which to work.

CHAIRMAN—Could you come back to us on notice? If you could respond to the committee secretariat in the next couple of days, we would really appreciate it. We are on a very short time frame.

Mr Quinlan—Sure.

Mr SECKER—When I first heard you I thought your biggest concern was that you would be out of a job. But then I think it led on a bit more to a concern that you may lose some of your professionals who are involved in your organisation. How many professionals, of all sorts, do you have all over Australia? I just want to get some idea.

Mr Quinlan—We make a pretty conservative estimate of 6½ thousand staff across our agencies nationally.

Mr SECKER—How many clients would you deal with each year?

Mrs Roots—Over a million.

Mr SECKER—So that is where you are dealing with 49 per cent of Australia's—

Mrs Roots—The 49 per cent are in the specific family relationships services program. That is the only one we have done the research on.

Mr SECKER—Do you give legal advice as well?

Mrs Roots—Only the people who are lawyers give legal advice. We do some interpretation of how the law plays out but we would not see ourselves giving legal advice, no.

Mr SECKER—Do you receive funding from government bodies, whether they are federal or state? If so, how much?

Mrs Roots—Yes. As we said, we get about $15 million across the country for this. Directly on family services we spend about $71 million.

Mr SECKER—Which comes from your own funding?

Mrs Roots—State funding and church funding. But that is directly on family programs. We have a whole raft of other programs and we administer over $220 million annually. I will raise this here because I hope this committee is talking to the school counsellors, who I think would have a lot to add to this debate. There is a bulk of children who daily live with the repercussions of family problems. I think they would have a very informed voice. Counsellors in the Catholic schools and in some of the independent schools come out of our member organisations. They have some very interesting things to say. But there is the whole state system. I think that whole group would have something to reflect on with this legislation.

Mr SECKER—So you have, in your opinion, almost what we are trying to set up on a government run basis? You already have it in a large part of Australia.

Mr Quinlan—In large measure we think the broader family relationships services program does act to address many of the issues that are drawn out specifically in this legislation. The point we were trying to make earlier was that there is a massive system for dealing with family relationship breakdown out there and operating today, as we speak, and that we need to be very mindful of the impacts that these particular and narrow initiatives, welcome as they are in terms of trying to deflect people from courts and into less conflictive counselling sorts of services, have on the ground.

Mr SECKER—Do you have volunteers who help as well?

Mr Quinlan—We would not have many volunteers operating in the family relationship services area. As we said, we feel that this is one of the areas where the skills, subtleties and talents of workers are particularly important. It is a much more difficult area for volunteers to be involved in.

I want to address specifically for a moment the question at the outset about us being concerned about being out of a job. I think in some measure it is a discussion that does happen in parallel to lots of these initiatives. I would like to say—and I hope I have given some indication of this—

that we run what we believe to be a network of agencies underpinned by very high standards. In the marketplace we have proved to be quite competitive in terms of government programs that we have tendered for. While we are not in a position to articulate it in detail, we also believe that we add an enormous amount of value to the tender price on the programs that we run. We use a large range of assets that are not funded by government and we bring a large measure of organisational skill and expertise to bear on programs that are not funded in tender arrangements. While we do not have a fear of tendering processes, we do have a fear of processes that do not take account of the full value that organisations bring to bear on these programs. I do think, frankly, that it is a challenge for government to ensure that they fund these programs in a way that is open and competitive and so on but in a manner that brings to bear the very vast experience of organisations like our own—and I do not restrict it to our own; there are many in the sector who bring years of experience to these programs. I think there is a danger, as we broaden the pool of organisations that are to be funded under theses sorts of initiatives, that we will lose much skill, much subtlety and much talent inadvertently and perhaps some years down the track have to take steps to redress that.

Mr SECKER—That is a good point.

Mr PRICE—Margaret, in relation to the question asked by the chairman about abuse, you said that the important thing was how we resolve conflict and left that up in the air. Could you expand on that observation?

Mrs Roots—I am not sure how to answer your question. I think the crucial factor for our children and for our children's children is actually getting systems where they are not living with entrenched conflict, because we know that that is what does the damage. Rather than just getting decisions, to me the important thing is that we have parents who are civil and who hopefully cooperate around resolving disputes. In separation, all the people who get to these centres and cannot make their own resolutions or need assistance are in some order of conflict, and it is the conflict that does the damage. In fact what the decisions are is almost not the issue. If they cannot do the ongoing management, what happens is that the children step in and manage it. We know that—we see it as they come through our doors. I think we should have at the top of our minds the question of how we get to this group of people who are trapped. A lot of them, even when they get decisions, want to carry out the decisions but, because their pattern of interaction and the way they cooperate with each other has taken them down this path, they do not know how to get out of it. So they repeat even the decisions in the light of their pattern of how they got there. What we need to be targeting is how they interact as parents so that we break that cycle, because that is the only way we are going to make a difference.

Mr Quinlan—And programs like the FRSP are able in some measure to achieve that sort of ongoing engagement, that sort of ongoing case management approach with couples and families who are working through difficult circumstances.

Mr PRICE—Pardon my ignorance in asking the question but—if we have a successful parenting plan through these new centres and five years down the track when circumstances may have changed; children have become teenagers and there are different demands about how parents should act in relation to their children—do people have an opportunity to go back to one of these centres, or do they need to get a parenting order from the courts? What is the direction?

Mrs Roots—I think that you would have to have the centres open to renegotiate. Parenting plans are only as good as the degree of cooperation the parents will go through. We know that they change daily. Certainly, as the children get older, they put their way of operating in, which blows parenting plans out the door, so to speak. The crucial point about parenting plans, to me, is the one at the bottom that says, 'How are you going to operate when this parenting plan falls down?' It is not the stipulation of how many days, how many nights or whatever but the frame for negotiation in a way that works. Without that—if you do not have that—you will be back somewhere, whether it is to the parenting centres or one of our centres or whether it is trying to talk to your father-in-law or whatever to get some assistance with it.

Mr PRICE—Is your association satisfied with the compliance regime in the changes to the legislation? Do you think the compliance regime is going to work?

Mrs Roots—I would hope that you do not have to get to the compliance regime. We need to put more work in before you get to compliance. We know that with the compliance regimes last time round we had a revolving door, with magistrates sending people out to our centres to go to courts or whatever and then back to the courts. We would say, 'They don't fit,' or 'We don't have a course,' so they would send them back. It just does not meet the mark. To me, if we are dealing with families and family support, it is about nurturing and about supporting. Let us get some preventative things in at the front end and, hopefully, there will be relatively few. Of course, there will always be some weak compliance, but then you have to apply it.

Mr PRICE—In your association's expectation, do you believe parents will now be spending less money on solicitors or lawyers or that there will be no change or a dramatic change? How would you assess it? Do you have a view about the impact of this legislation on the billions that parents spend on the legal profession in family law matters?

Mr Quinlan—We welcome these initiatives when they are announced on the basis that the general thrust of the legislation and the programs seem to suggest that people would be moved out of the legal system and would have ultimate ways of resolving issues. In some ways, we cannot assess the gross sums people will spend on legal advice until we see the application of the programs on the ground, but we are hopeful, overall, that the general thrust of the legislation is the right one—it attempts to move people away from lawyers and into face-to-face negotiations on some of these issues. In large measure—and I think this is the point that Margaret was making also—the success of this particular, and of necessity, narrow band of legislation will largely be dependent on funding and so on in programs in other places. So, if there are adequate supports and adequate programs on the ground in other places, this particular small section of legislation will have some chance of operating in the manner in which it is intended. If those other programs are forgotten and left aside while we focus on the specifics of family relationship centres in the short term, there will be a risk that they will flounder, and they will flounder because those other services on the ground are just not available to families who need them.

CHAIRMAN—Thank you very much for attending today. The secretariat will send you a draft of your evidence for checking. If you could get any additional thoughts you may have to the secretary as soon as possible, it would be appreciated. Also, I think you may have undertaken to give us some additional responses, so if they could come back as quickly as possible that would also be appreciated.

Mr Quinlan—If further questions or discussions would be welcome down the track, we would certainly welcome any opportunities to provide assistance to the committee.

CHAIRMAN—That offer is appreciated.

[10.40 am]

LEEMBRUGGEN, Mr Donald Malcolm, Member, Family Law Practitioners Association of Queensland Ltd

Evidence was taken via teleconference—

CHAIRMAN—I welcome the representative of the Family Law Practitioners Association to this hearing. Mr Leembruggen, your evidence is the first by videoconference in this inquiry, so there may be some teething problems. If there are, we apologise. Could you tell the committee a bit more about the capacity in which you are appearing before us?

Mr Leembruggen—I appear as the nominated representative of the Family Law Practitioners Association of Queensland Ltd.

CHAIRMAN—Which is part of the Queensland Law Society?

Mr Leembruggen—No, it is not; it is a separate body. It represents 400 family law practitioners, including social workers, barristers and solicitors.

CHAIRMAN—Thank you. Although the committee does not require you to give evidence under oath, I would advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I invite you to make a brief opening statement, say five or 10 minutes, outlining the position of the association. We understand there is no written submission, so if you could outline the association's position I will then invite members to ask questions.

Mr Leembruggen—I am an accredited specialist family law practitioner of 23 years experience and I am a solicitor in private practice. Due to time restraints and the Family Law Practitioners Association's lack of resources, we have not prepared a written submission. We have, however, had the opportunity to read the Family Law Section of the Law Council of Australia's review of the exposure draft of the amendment bill, and the Family Law Practitioners Association generally agree with and accept the objectives and observations of that review. Members of the Family Law Practitioners Association of Queensland accept the policy decisions which underpin the bill. Any initiative that seeks to reduce the reliance of parents on litigated solutions to issues arising from their marriage is to be applauded.

I intend to address certain issues arising from the bill on a practical, at-the-coalface basis. The first issue I wish to raise goes to provisions related to parenting plans. I note that the Family Law Section of the Law Council has recommended the adoption of a cooling-off period before a parenting plan can become an enforceable agreement. I believe there can be some use for a regime such as the bill proposes where variations of an existing order are minor—for example, a swap of holiday or weekend living arrangements. However, any substantive change to parenting orders by a parenting plan, I believe, should at the minimum be subject to a cooling-off period or, if not supervised by the court, should be certified by a legal practitioner.

I practised the law at a time when the Family Court had not adopted its current policy of supervising arrangements made by parties to ensure that due process was involved in the making of parenting agreements. Before that happened, I observed many occasions where a spouse was pressured into making a written agreement. Typically, prepared drafts are placed before the spouse with a demand that it be signed. Whilst domestic violence may not be a factor, commonly there are power imbalances in relationships which can be exploited to ensure a compliant, weaker spouse. I have no doubt that the provisions as they are currently drafted do not provide sufficient protection for that weaker spouse.

The second issue I wish to comment on relates to the qualifications necessary to become a family dispute resolution practitioner. I have been unable to determine what qualifications will be required. The Family Law Practitioners Association is concerned that entry be by way of a qualification which has provided a lengthy period of involvement in family dispute resolution. People that may be eligible would be social workers or family law mediators. It has been my experience that many divorced people who have had protracted involvement in Family Court proceedings form the view that they should become involved in the system and right perceived wrongs in the system. It has been my observation that many of these people would be totally unsuited to such a vocation. The qualification process for these officers will be an important part of the success of the proposals.

It should be noted that currently, in my understanding of the statistics, approximately 70 per cent of family disputes are resolved before court intervention, substantially through the use of family law practitioners; 25 per cent are resolved by the parties after the commencement of court proceedings; and five per cent are determined judicially. It will be the challenge of the family dispute resolution practitioner to maintain and increase the percentage of disputes, which is currently 70 per cent, which are resolved prior to institution of Family Court proceedings.

An auxiliary issue arises from the specific geographic demands of Queensland. Regional centres such as Mount Isa and Rockhampton can have limited access to counselling facilities. The structure of family relationship centres will need to respond to these regional needs. Overall, however, the creation of these centres will enable those who are currently locked out of the system—and I think there are many—to have an opportunity to have their family issues responded to.

The third issue, which I will make a brief comment on, is to endorse the Family Law Section's comments relating to the complexity of the proposed contravention provisions. It has been my experience that the more complex the enforcement provisions are, the less likely they are to be successful in achieving their aims.

My final issue goes to the complexity of the bill in that it will affect the look of the act. As proposed, it will be a difficult piece of legislation to read. A sequential numbering system and perhaps tighter theming would assist practitioners and the public alike in the understanding of the act. The Family Law Practitioners Association wishes only to help in achieving the objectives of the bill, and such criticisms as are raised by me or the Family Law Section are raised with this mind. We hope that the legislative environment will be effective, workable and accessible for families and practitioners.

CHAIRMAN—Thank you very much for that opening statement.

Mr TURNBULL—Could you take us to the section about parenting orders that you are concerned about and tell us what changes you would recommend be made to the legislative language.

Mr Leembruggen—I have not made a note of the section.

Mr TURNBULL—Proposed section 64D of the bill talks about parenting orders being subject to later parenting plans. Do you want to give some thought to that?

Mr Leembruggen—I am trying to find the part which relates to the fact that they have to be agreed to in writing and signed by the parties.

Mr TURNBULL—It says:

Unless the court determines otherwise, a parenting order in relation to a child is taken to include a provision that the order is subject to a parenting plan that is:

(a) entered into subsequently by the child's parents; and

(b) agreed to, in writing, by any other person (other than the child) to whom the parenting order applies.

There does not seem to be a requirement that the parents enter into a later parenting plan in writing.

Mr Leembruggen—Specifically, it is that provision that I feel needs to have at least a cooling-off period.

Mr TURNBULL—So your suggestion with respect to 64D is, firstly, that the parents should agree in writing. Is that right?

Mr Leembruggen—Yes, that is right.

Mr TURNBULL—Parents should agree in writing and there should be a cooling-off period of how long?

Mr Leembruggen—That is where this becomes difficult, because I understand that there is a need that can be met by this arrangement. The need, for example, may relate to swapping weekends: swapping this weekend for next weekend. Swaps often occur that technically breach orders. This provision enables a weekend to be swapped—and it might be at short notice. That need seems to be met by these plans, but if there is anything beyond that type of need that goes to the structure or the substance of the order, I think a cooling-off period of no less than 14 days would be required.

Mr TURNBULL—So you would say a cooling-off period of 14 days should apply to later parenting plans which are intended to apply to events more than 90 days after the entering into of the later parenting plan, or something like that?

Mr Leembruggen—Something like that: 90 days, or maybe a little bit less. I am just trying to think of practical events that might occur, like school holidays—

Mr TURNBULL—The point is that you cannot have a cooling-off period that is going to butt up against the date of the variation, can you?

Mr Leembruggen—No.

Mr TURNBULL—So there has to be some—

Mr Leembruggen—That is right.

Mr TURNBULL—You think 90 days might be too long?

Mr Leembruggen—I think it might be a little too long. I am more inclined to bring that down to 45 days or something. I am just trying to think of practical events like school holidays, which can be substantive. A term often does not go for 90 days.

CHAIRMAN—Thank you for that. To what extent do you think that the draft legislation accurately represents the government's response to the committee report *Every picture tells a story*?

Mr Leembruggen—I have not read that report, so it is very hard for me to respond. But, from what I have understood, the report sought to achieve a greater level of shared parenting. I think that there has been an enormous uptake of shared parenting over the last several years. It has become a much more common outcome not only through the courts and litigated outcomes but also particularly through outcomes negotiated by solicitors. I think that the provisions of the act buttress that. There is no question that they seek to reinforce that type of outcome, but it is only reinforcement. Of course it is not mandatory, and it cannot be, from my experience.

CHAIRMAN—Are you of the view that the draft bill is likely to result in a family law act which is more complex or less complex? Do you consider the costs and length of litigation as a result of these amendments would be likely to be greater or lesser?

Mr Leembruggen—I mentioned the five per cent of cases which end up being determined at trial by a judge—it is roughly that number. I do not think these provisions will have much of an effect one way or the other on that type of case. It is possible that the evidentiary provisions may increase the length of the case, but then a judge certainly has it within his power to ensure that the case is run in a way that is cost effective. For that five per cent, I think not a lot will change. The reason for that is that there are cases that are typically not for legal issues; it comes down purely to personalities. There are people who just cannot reach agreement, no matter what incentives are put in front of them. They will not reach agreement. I can give lots of examples of the types of people who are typically involved in that. It might be people who have some sort of diagnosed personality or psychiatric disorder.

As for the 25 per cent that are resolved after the institution of court proceedings, I think that is where the business of these amendments will substantially lie—that is, to reduce the number of people who file applications and who subsequently settle. There is a real prospect that these

provisions will assist in reducing that number. Also, as I said before, there are a number of people who are currently disfranchised from the system who do not even bother ringing a lawyer because they know it is going to be too expensive. They do not even bother ringing legal aid, because legal aid do not have any money, or because they have been told that legal aid do not have any money. This will give people a forum to sort out their issues.

CHAIRMAN—Do you think the bill adequately clarifies that parents may exercise parental responsibility in relation to the day-to-day care of the child when the child is in the care of one parent or the other, subject to orders of the court necessary to protect the child, without the need to consult with the other parent?

Mr Leembruggen—Yes, I do.

Mrs HULL—The previous committee agreed in *Every picture tells a story*—the last report—that, all things considered, each parent should have equal say in where their children reside and that wherever possible an equal amount of parenting time should be the standard objective, taking into account individual circumstances. Basically, we were trying to say there should be equal say and, as first point of call, the opportunity for equal shared residency, if that were desirable and in fact achievable. Do you think that this bill can achieve that the way it is written now?

Mr Leembruggen—I do not know that you will ever achieve equal say through any legislative amendments, purely and simply because of the interplay of personalities and power imbalances. You can bring in very skilled practitioners who can even things up a bit, but I do not know that parents can ever get an equal say. That is just the interplay of personalities at work.

As to achieving the option of shared care in the appropriate circumstances, as I said before, it does buttress that provision. It will present in the minds of judges and practitioners that that is a desirable outcome, if it can be achieved. Coming from my background, when I first started practising it was 9 am Saturday to 5 pm Sunday each alternate weekend and half school holidays. That was the standard and no-one contemplated anything different. There has been an enormous drift towards more equal care of children. This will only assist in the appropriate cases in achieving that.

Mrs HULL—Should equal be an acceptable starting point, though? Notwithstanding the fact you do not think parents will ever get an equal say, should that not be the accepted starting point?

Mr Leembruggen—I do not think that presumptions assist us particularly on that level.

Mrs HULL—I do not think it is a presumption. It is clearly just that, all things being equal, there should be an equal say. Isn't that the best platform to start from?

Mr Leembruggen—I would call that a presumption and, no, I do not think so. I do not think that we can be prescriptive. Every case has its own factors and they all need to be looked at in their own circumstances.

Mr MURPHY—Do you think that the legal effect of parenting plans will act as a disincentive to parents considering employing them?

Mr Leembruggen—If they understand the legal effect—they may not. We have had parenting plans in place since 1995 and very few have been used. There has been a fair level of formality attached to them, particularly through the registration process and the court forms, so they have not been easy to do—and I think that is probably the major reason. But, if they become a document that is signed by just the husband and wife, I think they will become very popular in a hurry. They will become very popular where somebody is trying to rush an objective unfairly. I can easily envisage situations where, for example, money is being held back for signing an agreement: if you sign that agreement, here comes the money. All those sorts of pressures will come to bear.

Mr KERR—Could you give some attention to the issue of parents who wish to reside substantial distances from each other—to travel, to take up a new relationship and the like. Have those issues, in your view, been sufficiently addressed in the draft legislation?

Mr Leembruggen—I have not really turned my mind to that. Relocation is an extremely difficult issue. It needs a lot of input from social welfare professionals—in particular, child psychologists—because it is really an issue of allowing children to establish a bond with both parents. There is no doubt that if children are moved too early the ability to form an intimate bond with both parents, or with the parent who has been separated, is significantly jeopardised. Moving should be a lot easier for older children than for younger children.

CHAIRMAN—Do you think many partners will move their residence away from where the other partner is simply to deprive that other parent, often the father, of contact?

Mr Leembruggen—Yes. It definitely happens. I have one case at the moment in which the lady went to Perth—the furthest away she could go.

Mr KERR—It struck me that the provisions in relation to counselling and precourt procedures are all premised around the fact that people are in roughly the same geographical location. Nothing can now prevent a parent, if their marriage or partnership breaks up, from simply relocating to another part of the country and re-establishing their lives. I am not certain how these new procedures will then operate.

Mr Leembruggen—On the counselling level, I know that the Family Court in Brisbane very commonly orders people back to Queensland or Brisbane. If they have done a bunk they are very commonly, but not always, ordered back. As a fallback to that, if they are allowed to stay in the place where they have gone, they are often ordered to come back for the purpose of assessments or counselling. In the case that I mentioned the lady got up and went to Perth with the little boy. We located her after searching for her. The court has allowed her to stay there in the interim but has ordered her to come back for the purpose of family reports and for counselling on the issue, so she has had to make several plane trips back.

It does come to the point that I mentioned about the difficulties with this environment for regional centres in Queensland. I mentioned the need to be able to design the family relationship centres to take this into account. It may be that facilities such as the type of facility that we are

using now will need to come into play. I do not know that strict physical bricks and mortar solutions are necessarily going to work in a place like Queensland for everybody.

Mr PRICE—I was interested in your comments about the five per cent and that the workload of the Family Court would still be there. Do I correctly understand your response to that earlier question?

Mr Leembruggen—The workload, as far as it relates to trials—

Mr PRICE—Yes.

Mr Leembruggen—is likely to be there, but not necessarily other issues where proceedings are commenced and settled.

Mr PRICE—Would it be reasonable to suggest that the current funding that the Family Court enjoys will need to be maintained, notwithstanding the changes proposed?

Mr Leembruggen—To the extent that the Family Court is engaged in trial works—

Mr PRICE—And the Magistrates Court.

Mr Leembruggen—I used that term to cover both. To the extent that it is going to impact on their trial work, I think that it will be marginal. To the extent, however, that it will impact on the balance of the work that the Family Court is engaged in, which, as I said, results in settlements in about 25 per cent of cases, you would like to think that that would be reduced through this process.

Mr PRICE—I am interested in your comments about the disfranchised. Mostly that is about contact orders that are not complied with and they run out of money to go back to the court. I do not understand how in the new system that is capable of being addressed satisfactorily outside the court.

Mr Leembruggen—It really comes down to the ability of the dispute resolution practitioners who are put in place. It is such a 'people' area. These people are going to need great skills to be able to achieve the outcomes.

Mr PRICE—So you are confident that the relationship centres will be able to impact on these non-compliant contact orders?

Mr Leembruggen—Provided that there are people in those centres who have the skills.

CHAIRMAN—You mentioned the Family Court workload. Do Family Court judges work hard enough, in your experience?

Mr Leembruggen—There are those who work exceptionally hard and there are those who do what they are asked to do.

CHAIRMAN—A beautiful answer, thank you.

Mrs HULL—I want to follow up on Mr Kerr's question on the issue of relocation. While we were doing the report it was considered by one counsellor in Parramatta that the whole emphasis should be on relocation. If you were adhering to our report recommendations and all of our instructions of reference et cetera that it all be in the best interests of the children, should relocation be dealt with in far more detail than it is currently in these draft changes? For instance, if a parent requires relocation, saying that there are better work opportunities or maybe higher pay or closer proximity to family structures et cetera, should it not be considered that that might be in the best interests of the parent rather than the best interests of the children? Yes, you might have reduced income, or you might have the same income rather than opportunities of enhanced income, but at least the best interests of the child are still being thought of. Therefore, could it be considered that, in the best interests of the child, relocation should not take place? Should relocation be a major consideration in this draft legislation and should there be more emphasis placed on determining why and how relocation is accepted in the best interests of the child?

Mr Leembruggen—Again, I think it is a really difficult area to be prescriptive about. There is certainly an acceptance in family law of the right of an adult—a parent—to freedom of movement. That creates a tension between that right and the best interests of the child. It is the balance between the right of freedom of movement and the best interests of the child which causes the tension and the difficulty in this area. I do not think it is something that can be prescriptive, unless the government chooses to try to limit rights of people to move. That is very much a policy decision; it is not something I would like to comment on. I think that is really where the solution lies. I suspect that that would be a fairly full-on issue if it were taken on.

CHAIRMAN—Do you think the court ought to give permission before a child can be moved from the general locality where the child has previously lived? Obviously, adults have freedom of movement, but should they have the right to remove the child from the other parent?

Mr Leembruggen—The correct advice to give to clients is that, if they are thinking of moving, they should either get a written agreement from the other spouse, saying, 'Yes, I agree to your move,' or make an application to the Family Court for permission to move. That is what happens now. Not uncommonly, people get up and do a runner. Very commonly, they are ordered back until the conclusion of proceedings, and proceedings in those circumstances are generally expedited so they can be dealt with within, say, six months. Sometimes the court does not do that. I do not know that I necessarily agree with it when it does not.

Mrs HULL—Hear, hear! I do not either.

Mr Leembruggen—Each case has to be determined on its own facts. Often, when that happens, there are good reasons. Sometimes I look at the reasons and I say, 'I didn't agree with that.'

Ms ROXON—I apologise if you covered this at the start of your introductory statement. Please tell me if you did. Some of the submissions have raised issues about the terms of the bill and whether they might put some families and children at more risk of violence. I have not heard you address this issue yet. Some of the other submissions focus on the intention of trying to encourage meaningful relationships with both parents. Do you have a view as to whether or not

that comes at a price? Do you have any concerns at all about the changes and the impact they may have on families where there has been violence?

Mr Leembruggen—In practical terms, no. If it comes to being a court resolved outcome, a court is always going to respect the issue of family violence and how that has impacted on the other spouse and the children. I do not know that these legislative changes will lead to a practical change in that respect.

Ms ROXON—I understand what you are saying about matters that end up before the court. Obviously, a lot of the changes are to encourage matters not to be in the court, and some of the concerns that other submissions have raised focus on whether that will inappropriately push some families to other methods of resolution rather than the court process. Is your confidence only about matters that go before the court, or do you see that those cases will be able to separated from the rest fairly easily early on?

Mr Leembruggen—I guess I remain concerned about power imbalances in general in an environment in which people can go to family relationship centres and in due course ultimately enter into agreements which have no oversight from either the court or a practitioner. That certainly makes it possible that people who are oppressed either emotionally or through family violence will agree to things that they ought not agree to.

Mr PRICE—Are you saying only the legal profession is able to detect a power imbalance or the fact that someone is being oppressed?

Mr Leembruggen—I am not saying only the legal system can do that. Somebody has to. Family lawyers, who have done this work for quite a long time, have a good ear for it. But social workers, councillors and mediators who have been involved in this area also have a good ear for it.

Mr PRICE—Isn't one of the problems in this area the sheer numbers? In my own state of New South Wales it is relatively easy to obtain an AVO. They are churned out by the magistrate at Penrith like sausages. In all those, there are hidden some very serious cases that everyone needs to take special action about, if I could put it to you that way.

Mr Leembruggen—Yes.

Mr PRICE—We do not currently have a filtering system, if you like, that is able to sift through the sheer numbers to make sure that we identify the cases that you are concerned about and that they are fast-tracked into areas more capable of dealing with them than a family relationship centre.

Mr Leembruggen—I agree that the currency of AVOs or DVOs—domestic violence orders—up here has been fairly well undermined. A lot that I see—and maybe I see a certain type of case—are taken out strategically because it is thought they are going to assist in a Family Court children's case, or are taken out oppressively as a payback. They are very often taken out on dishonest evidence. There is no doubt that there are lots of orders made that with a more rigorous approach ought not be made.

It seems to me that the response of the Family Court to that is that they do not necessarily, when we get into the court, pay a lot of respect to the orders in a substantive way. We have our protocols about how you do not bring people into the same room together without their consent and all that sort of stuff. But in a substantive way in a case the Family Court has to look beyond the fact that there is such an order in place and look at the allegations to determine the severity of them.

CHAIRMAN—Thank you very much. Unless there are any other pressing questions—

Mrs HULL—Can I make a quick comment?

CHAIRMAN—There is one pressing question.

Mrs HULL—Congratulations: you are the first in a long list of family law practitioners who I have heard who have made some very clear and commonsense comments. Thank you very much.

Mr Leembruggen—Thank you.

CHAIRMAN—Thank you on behalf of the committee for appearing via video link. The secretariat will forward you a copy of the evidence you have given for you to check. If you have any further thoughts on reflection that you would like to convey to us, you can pass those on to the secretariat. Thank you very much.

[11.20 am]

BUTLER, Mr Wayne, Executive Secretary, Shared Parenting Council of Australia

GREEN, Mr Michael QC, President, Shared Parenting Council of Australia

GREENE, Mr Geoffrey, Founder and Immediate Past President, Shared Parenting Council of Australia

Evidence from Mr Green was taken via teleconference—

CHAIRMAN—Before we get this element of the hearing under way, I require a member to move that the submission from the Shared Parenting Council of Australia be received and authorised for publication.

Mrs HULL—So moved.

Mr KERR—Seconded.

CHAIRMAN—The motion is carried. Gentlemen, thank you very much for appearing via video link and in person. Thank you very much for your submission, which we have more or less just received. Before I invite you to make an opening statement, I have to point out that the committee does not require you to give evidence under oath but that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would one of you like to make a brief opening statement?

Mr Green—I would be happy to do that. What I would like to say by way of opening, keeping it short, is that the Shared Parenting Council of Australia, as indicated in our submission, which no doubt you will have the opportunity to get to, are completely supportive of the initiative that this government has taken in grasping a very difficult and contentious issue of law practice and procedure. This followed on from the excellent report by the House of Representatives Standing Committee on Family and Community Affairs *Every picture tells a story*, followed by the government response and discussion paper and, indeed, translation into the bill. The way the government has managed this consultation has really effected what I believe will become significant reform and, more than that, world-shaking changes, not only to the legislation that governs the circumstances of parents and children after separation and divorce but also to the culture. It is that change of culture which is critical, and that was picked up by the original committee as well as by the government itself.

Turning to the bill, there are some outstanding features, such as its concentration on shared parental responsibility and clauses about children having the right to and opportunity for the 'meaningful involvement' of both parents. They are magnificent phrases that should effect cultural change and have not been there before, neither in practice nor in legislation. The bill places importance and the accent on parenting plans, of course, and on encouraging separated parents to reasonably and sensibly look at decent child-focused arrangements for their children

after separation and/or divorce. The concept of residence has changed, and that dreadful word 'contact' has been removed from the legislation.

There are some wonderful amendments to section 68F of the Family Law Act—which are, of course, required to take into consideration the best interests of the children. The family relationship centres are a much needed, much longed for and, I believe, revolutionary innovation which will provide groundbreaking and world's best practice here in Australia. The accent will now be on non-adversarial proceedings in the court and on doing away with the rules of evidence, and, I believe, the effective rolling-out of the children's cases pilot approach to practice and procedure, which is already happening very effectively here in Sydney. All of those things are really marvellous.

Coming to the bill, it is somewhat disappointing to see what I would submit is a reluctance in the draftsmen of the bill to properly effect not only the presumption of shared parental responsibilities but also the concept of shared parenting. Starting from the title, it is not the 'shared parenting bill; which, in our submission, it ought to be. It is called the 'joint parental responsibility bill'. However, maybe that is being overly legalistic and pernickety. In proposed section 61DA itself, that is the presumption.

I want to point out that I practised in this area of law many years ago when I was younger but now I am a practising mediator. I do mediations several times a week. The introduction into the Family Law Act of a presumption of joint parental responsibility is wonderful and good, but it is not revolutionary in the sense that we already have that default position—as members of the committee already well know. Indeed, in all of the mediations that I do and in the cases that I hear about, joint parental responsibility is the default position and very rarely is it varied, in my experience. So to have it also expressed in very cautionary ways with the note attached to it is, I believe, unnecessarily negative. It is almost like saying to separated parents, and to fathers in particular, 'We want you to know that the presumption is there but we have to be very careful about you.'

Moving to proposed section 65DAA in which, strangely, the legislative draftsmen have not picked up at all accurately the recommendation of the HORs committee, which, as everybody knows, was against a presumption but certainly insisted on the starting point of the true shared parental time—whether expressed as equal time or simply expressed as substantially shared parenting time. That recommendation of the HORs committee was quite clear, and to leave it as the draftsmen do in the bill as simply 'substantial time' is very disappointing and quite mystifying. I personally, in a meeting that Wayne and I had with the A-G's draftspeople, asked the question: why was this retreat made? The answer I got was, 'It was to allow for flexibility.'

I really find it hard to take that seriously, because if we have a concept where truly shared or substantially equal parenting time is simply the starting point of discussions by a court, mediators or counsellors then that allows for all the flexibility in the world. That is particularly so as it is couched in such cautionary terms as 'practicability', 'if the situation is practicable' and 'if it is in the best interests of the children'. So that is disappointing.

Let us be quite frank and direct about it: that section is, as someone once suggested, totemic in our discussion today and in the discussion about the new bill. If that is not amended substantially to reflect the true intentions of the committee after its vast, intensive, skilful and wonderful

negotiations and consultations throughout Australia then it will go very close to disappointing not only the majority of separated fathers but also good-thinking separated parents and indeed their children throughout Australia. That will render the bill very difficult for that substantial part of the community to accept.

The other point I want to make is an important one, and it is not just asking for small change. The bill provides for the exclusion of joint parental responsibility and other considerations—for instance, the necessity to seek first conciliation procedures prior to going to court—if there is any abuse. Of course we are all conscious of that and we fully support that. We on the council are as concerned as anyone about the proper treatment and protection of children, and about the necessity to come down hard and fast on any reasonably established occasions of abuse of children.

However, the term 'family violence' contains some problems as it is expressed in the bill. It is often confused with conflict and it can provide—not always—an excuse for disputes between separated parents such that it would make it very easy for negotiators, mediators, counsellors or the court to exclude joint responsibility or proper shared parenting time on the allegation of conflict or violence. Conflict needs to be differentiated in some way from violence. But in all circumstances, even as it stands, family violence needs to be better qualified. It, again, can be used as an excuse. Left vague, it can suggest anything from a heated argument about the arrangements for a child to someone hitting a person over the head with an axe. Left as it is, it runs the risk of increasing litigation to the extent that it will defeat the real purpose of the bill and our general purpose, which is to protect children from serious and entrenched forms of violence and indeed conflict that impacts on them in a serious way. That is the violence and the conflict that we should be concerned about. So, Mr Chairman and members of the committee, overall they are the matters that I feel are important. Wayne Butler and, no doubt, Geoffrey have other things to add. Thank you for hearing me.

CHAIRMAN—Thank you.

Mr MURPHY—Gentlemen, I would like you to amplify your recommendation on page 7 of your submission in relation to the relocation of another parent. I specifically refer to section 68F(2)(d). You suggest that it should read:

> Should a parent wish to change the residence of a child in such a way as to substantially affect the child's ability to reside regularly with the other parent and extended family, the court must be satisfied on reasonable grounds that such relocation is in the best interests of the child.

Would you like to explain that?

Mr Green—They were my words so I suppose I should bear some responsibility for that. What has concerned us for a long time—and I know it has concerned not only legislators but also the Family Law Council and the Australian Law Reform Commission—is this vexed question of relocation. As you on the committee no doubt know, the courts have been up and down in relation to the two conflicting interests here. One interest is that a separated parent, often the mother, should be allowed and encouraged to get on with her life. If she sees that life and future as being with the children in another place, very much remote from where the father

lives and where the children have been enjoying contact with him, that is one interest that has to be looked after.

The other interest is often termed as the 'father's interest', or the 'non-custodial parent's interest', in being able to easily access the child and continue the relationship. We have always preferred to look on this as the right of a child to a continuing relationship and the opportunity for and availability of the means to effect that relationship. Therefore, it has always been our argument that that opportunity for the child should take precedence and should be considered very much in the best interests of the child, unless there are circumstances that suggest otherwise.

So far, the courts have disagreed. In other words, what I am suggesting is a certain onus on the relocating parent to prove his or her case that it would be still in the best interests of the child to relocate. The courts have steadfastly, and no doubt for understandable reasons, refused to consider that kind of onus. Indeed, all the cases suggest that there should be no onus on either parent to prove anything. Of course the commonsense situation, when the court is faced with this difficult question—and it is difficult—is that there must be an evidentiary onus, in practical terms, for the parents to put forward their best arguments.

We suggest that it will prevent a lot of litigation and it will be in the best interests of the child if the legislators come down with some formula, as we have suggested. I am not wedded to those words. It is not about making it harder for women to get on with their lives—I am not against women getting on with their lives at all! But I am very concerned, because I know for a fact from my own research and from research here and overseas that children are very upset by disturbance of their routine access, contact and relationship with both parents. They desperately want those parents and they desperately want to remain not only near their father but in their communities.

Someone said years ago that it is the village that brings up the child. Isn't it in the best interests of the child to centre on where this child's community is—its local school, friends and teachers, not just father, grandmother, uncles, aunts and all that? That is the community that this child is involved in. If you are going to disturb that, I would think that commonsense, decency and high regard for the welfare of the child should demand that you have very good reasons for doing that.

CHAIRMAN—Mr Green, I have another question before Mrs Hull and Ms Roxon ask questions. I queried a previous witness about this, the gentleman representing the Family Law Practitioners Association of Queensland. He said that, at least in Queensland, people who intend to relocate are advised to seek the consent of the partner or alternatively to make an application to the court. More often than not, the court will order the child to be brought back to the locality where the child was for various purposes. Are you saying that in other parts of the country the practice is not the same as in Queensland or are you saying that the situation in Queensland, which I realise is some distance from where you are, is not what the previous witness said?

Mr Green—If I am hearing you right, the suggestion from that practitioner was that, if the child were removed without the consent of the court or without the consent of the other party and taken somewhere else, the court will order the child's return, for sure. I am not a practising family lawyer—it has been a long time since I have had anything to do, practically, with that

side of the law—but I hear tales told and deal with cases every day in the mediation counselling area. That is common throughout the country, as I understand it. Is that what you were indicating—

CHAIRMAN—Yes.

Mr Green—that a child is being removed without permission? Yes. There is no question about that. And then, of course, it is up to the court to consider all the circumstances, to see what is right and wrong or what the court considers to be in the best interests of the child. I think that is common practice.

But, no, what I was suggesting is that when it comes to a full-blown hearing and the consent is not there then the reported cases have to deal with this very difficult issue of what is in the best interests of the child in this particular case—on best practice and on the reported cases—and it is a very difficult thing. A practitioner might correct me, but as I understand it the mere fact that the matter comes before the court for a full hearing and the child has been, shall we say, illegally and regrettably removed in that sense will not preclude a court making an order allowing the parent—perhaps it is a mother in this case—to take the child to another place. It will not of itself preclude it. The court may not be terribly impressed with what has happened, but that will not preclude it.

CHAIRMAN—Necessarily.

Mr Green—No.

Mrs HULL—I think that is what the practitioner was saying, as well, in his extended comments—that most of the time he did not agree with the court's decision to then enable relocation to take place. Relocation is the biggest issue that I confronted and still confront in these changes to the legislation—that is, whether or not we have been strong enough on it—because I think it has a significant impact. I asked this question of the last family law practitioner witness: should we be strengthening this relocation provision in the child's best interest? You have gone some way to answering or echoing my concerns with this.

I will just turn to recommendation 1 of your submission. Recommendation 1 was that there should be a 'primary policy statement' which states that the Parliament of Australia et cetera—that is recommendation 1, on page 3.

Mr Green—This was a combined effort. Would be possible for me to call on Geoffrey to answer that?

Mrs HULL—Okay. I will speak with Geoffrey in that case. Geoffrey, you lead off with that statement—

Mr Greene—That is right, yes.

Mrs HULL—and you say there should be a policy statement. Last week we heard, particularly in Melbourne, that there was a conflict in some of the changes in the 1995 law reforms, because one part of the act said that the child should spend time with its parent et cetera

and the next part of the act did not quite jell when there was substantiated family violence et cetera. It was asserted during those inquiries last week that, at times, that put children at risk in violent situations, because there was no cohesiveness in the law. If we were to adopt an overarching policy statement such as you suggest, how would we ensure that there would be no conflict between that statement and the actions of the court down the line where violence was substantiated, so that you did not have a conflict between that statement and court orders?

Mr Greene—Essentially, the provisions in the act dealing with those issues of conflict, violence or protection of the children would override a principal statement, because a circumstance has triggered the overriding of the principal position. This principal position is not legislation as such; it is a statement outlining the government policy in clear terms.

I have heard this morning a couple of witnesses express the complexity of family law. What gives people the capacity to deal with family law and with these relationship breakdown issues the best is to give them certainty—to give them an understanding of where they stand in the law. Providing a policy statement in the act outlining what your policy is, at least at the opening section of the children's provisions—part VII of the act—will give a clear indication to people. It will say: 'This is where we stand. This is what we believe. This is what we hang this legislation on. This is the principle that the legislation follows.' Then the provisions that provide for certain circumstances or the rebutting of the presumption of shared parental responsibility, or other provisions that need to take effect, are there in the legislation. That would make it clearer for parents.

Ultimately, we are talking about parents. It is not really about legal practitioners or counsellors or socialists or mediators dealing with this act—it is about the parents. Parents understanding where they stand is going to go a long way to reducing the need for them to access the Family Court and these processes. The government's policy—just to reiterate what Michael Green said in his opening statement—we believe is excellent. We believe that it has the capacity to be world-class; the legislation, certainly in the children's areas of the draft bill, we believe falls short of that. That is the reason for a policy statement: to outline to everybody the policy of Australia.

Ms ROXON—Going back to the introductory statements made by Mr Green, concerning 65DAA, you said that a key issue for the Shared Parenting Council was that the redrafting was far too cautious in achieving the aim that the government has stated it wants to achieve by this bill. Can you explain to me the examples that you said qualified this section too much with the expressions 'what was reasonably practicable' and 'what was in the best interests of the child'. I think you also referred to the use of 'substantial time'. Is it really possible to remove a consideration of what is 'reasonably practicable'? Would it be desirable to remove 'what is in the best interests of the child' as a consideration in making these orders? Can you explain a little more clearly what you intended?

Mr Green—We certainly have not suggested that. If I have been taken in my expression to indicate that, then that is certainly wrong. I do not want to remove from this or any part of the bill of the considerations of practicability and 'best interests of the child'—not at all. I was pointing out first of all that after 61DA(1)—that is, the presumption of joint parental responsibility—the bill has a cautionary note. In part it says 'joint parental responsibility does not involve or imply the child spending an equal amount of time or substantial amount of time

with each parent'. We do not need that there. Everyone, every separated father in the world knows that it does not mean that. We know what 'joint parental responsibility' means, and it does not mean '50-50' or 'equal time' parenting. So that was my first indication of overcautionary terms. If I was understood to have indicated what you have just outlined then that is simply wrong. With 65DAA my only query and objection is to the term 'substantial time'.

Mrs HULL—Are you saying it should be 'equal time'?

Mr Green—If you read 61DA(1) it is all very legal and nice but the explanatory notes simply turn it into a very cautionary kind of provision, in effect saying: 'Yes, we will let you in, but we have to be careful about you. Make sure you really understand.'

Ms ROXON—I misunderstood the provision that you were referring to, so thank you for clarifying that. Can I ask one further question that relates to your concerns that 'abuse' and 'family violence' were terms that often encompassed a wide range of things.

Mr Green—Only 'family violence'—I had a problem with the unqualified use of that term. I have no problem with the word 'abuse' because that clearly indicates serious concerns about the child.

Ms ROXON—Sure. I would like to ask you a question about family violence and the council's view. We have had some submissions about whether abuse or violence towards other family members, so not just towards the child, would be factors that should be taken into account. Can you tell me if the council has a view on whether or not abuse, for example, by one parent against another is something that the council regards as having an effect on the child?

Mr Green—My own view, and I am sure it is the council's view, is certainly—and I do not know if we have previously covered this specifically—that we would be very concerned about abuse in any way or violence that is established on reasonable grounds to be impacting on the child. I think that is a matter of great concern to all right-thinking parents, all right-thinking men and women, and certainly to me and to members of the council. I am not suggesting, nor is the council, that the bill and any reform eliminate any consideration of violence or abuse—not at all. It is already very well covered in the Family Law Act as it currently exists and I have no problem with further extensive coverage of that in the present bill. I am concerned just in relation to the term 'family violence' as it is used. If it is left up in the air and unqualified, it runs the risk, I think, of allowing the impact on children and their interests of serious, entrenched, established or proven—whatever you like to consider it—violence being not taken adequately into account here. All the research in the world—for instance, Dr McIntosh's research in Melbourne—indicates, and I was meaning to say something about this before, that we and most children are all regrettably subject to some form of conflict in and outside of family situations. A lot of this is passing and does not impact on children at all. Children, say Dr McIntosh and other researchers, can sustain a certain amount of conflict but if it gets serious, so that it is seriously impacting on them, and if it does involve either abuse or violence that is serious or entrenched or ongoing, it really does affect the way they are looking at the world and themselves and then of course that is a matter of great concern. My only suggestion, Ms Roxon, was in relation to those words in paragraph 7 of our submission and having a definition or perhaps asking the committee to look at the dangers involved in leaving 'family violence' unqualified.

Mr KERR—Can I test that proposition and be a devil's advocate. Some of the submissions that have come to us have focused on suggesting that the wrong priority has been protected here. They say the No. 1 priority is safety and identify safety not only as to the interests of the child but also as to the interests of the other partner. So a child-focused process or an exclusively child-focused process that says, 'There has been violence or abuse directed at a parent but it has not been manifested readily in the way in which the child has encountered it' may still be something that most of us would suspect would ordinarily be taken into account in terms of the way in which people are forced to interact through court orders or mediated solutions.

Mr Green—Absolutely. I have no problem whatsoever with that and I am not suggesting anything else. That, of itself, surely is going to impact, at least indirectly, on the child or children. That aspect of violence and abuse, of course, is already well attended to in the Family Law Act and in the criminal codes of the various states. Certainly, a court should take that into account.

Mr KERR—I am just wondering exactly what we are going to cut back. Your proposition to us is that we need to do something. I am trying to work out what that something is.

Mr Green—We have suggested that at least the word 'serious' be attached to it—at least that much. That is our submission. I would go on to suggest that the explanatory notes might indicate those matters that I have put before you—that is, that particular attention, at least, be given to those forms of violence or abuse that impact on children. An explanatory note could indicate, for instance, that serious abuse or serious violence towards a partner that may not be observed by or directly impact on a child is a matter that could be taken into account too.

Ms ROXON—I am just having some trouble with this. What is not serious violence?

Mr Green—I am glad you asked that, because it raises the other concern that, if this particular amendment is taken as is, it could prevent many of our early forms of mediation taking place. If, as is suggested in one section of the bill, the presence of family violence—serious or otherwise—is just left like that, it will provide an excuse or a reason for people to bypass mediation counselling and go straight to court. That would eliminate many of the mediations I do on a daily basis now, because we are often met with what I would call—and I am coming to your question, Ms Roxon—non-serious violence. There are many examples: a loud argument outside a house, for instance. A case I had last week was mediation between a father and mother who had an arrangement going that for some reason had broken down. He was aggravated by this, he drank too much and he went around and shouted at the mother and children inside the house, 'I want to see my kids!' That was it. She applied, quite reasonably, and got an AVO. That was all settled in the mediation that followed. Because of the legal aid policy, it was not excluded. Her consent was required, of course, and we had a mediation session. The situation was rectified very early in the piece, and we got the relationship and contact agreement on foot again. I would suggest—

Ms ROXON—But that was by consent. Presumably there is nothing in this bill which will prevent people from being able to agree to go to dispute resolution. Your consenting parties who currently appear before you as a mediator will still be able to do this. We are taking about exclusion from the compulsory requirement to participate.

Mr Green—In that particular case, if that mother had not consented and it had gone to court, that would have blown out into a full-blown adversarial hearing. It would have been months and months before a proper parenting agreement could have been reached either by consent or by the court. We were able to do it early. My answer to your question is that there are forms of violence—no violence is good, we are not talking about quality—but there are forms of violence that are less serious than others. That is one example. A mere passing argument, for instance, can sometimes be identified as a threat of violence, but it is not serious and it is a once-off situation, whereas if this particular father had got drunk and thrown a rock through the window or hit somebody or went around repeatedly, of course the level of seriousness goes up.

Mr TURNBULL—On the point that Ms Roxon has been exploring with you, I assume we are talking about section 60I(8). Are you suggesting that the references in paragraph (b) of subsection (8) to family violence be qualified such that it is family violence in respect of which a party to the marriage reasonably apprehends physical harm being done to the party or the children? Is that the sort of distinction you are trying to draw?

Mr Green—Can you give me the section you are referring to again please?

Mr TURNBULL—I assume we are talking about section 60I—I for Italy—and subsection (8) and the proviso in paragraph (b) thereof.

Mr Green—Yes.

Mr TURNBULL—Are you suggesting that family violence in that context should be qualified in such a way, for example, as to only operate as an exclusion of the compulsory obligation, if it is family violence, where one of the parties has reasonably apprehended that physical harm could be done or has been done to them or, with respect to the children, physical harm could be apprehended to be done or has been done to the children. Is that the distinction you are suggesting we draw?

Mr Green—Yes, that is one part of it. It should be—

Mr TURNBULL—The only thing is—sorry to talk over the top of you—that Ms Roxon has a very fair point in saying it is hard to say what is serious family violence and what is not. I do not know that is going to be very helpful to anybody but, the link—

Mr Kerr interjecting—

Mr TURNBULL—yes, that is right—with physical violence is one that would be understood. I am trying to tease out how you would want to put your suggestion to us in a way that it could be considered.

Mr Green—I agree it is not just a question of physical violence at all; that is only one form of violence. I agree with you and Ms Roxon in saying this is a difficult area, and I am not trying to exclude the necessity for court intervention in proper cases at all. But that is what a court is there for: to decide what is a proper case for the exclusion of easier, quicker and more remedial and non-adversarial processes by way of attendance, for instance, at family relationship centres. All I am suggesting is something like what you have put, but plus the word ‘serious’. Then it would

be up to the family relationship centres or the court itself, with the assistance of an explanatory memorandum, to make a judgment about that. All that we are trying to do is to exclude the possibility that a separated parent will use this is as an excuse on a very trivial matter, on a very trivial and passing occurrence, to avoid the intervention of counselling and mediation.

Mrs HULL—My question is both to Geoffrey and to you, Michael—although you might want Geoffrey to take it, bearing in mind he is sitting in front of us. You have raised the issue of interim orders in section 61DB on page 7. Perhaps I will direct this to you, Geoffrey: you have pointed out to us that the bill has not provided for a court to consider the presumption of shared parental responsibility in the interim proceedings. This is, in fact, a very significant issue because we certainly recognise that, from the last inquiry, interim proceedings tend to end up as final proceedings.

Mr Greene—Correct.

Mrs HULL—Would you like to outline to us how we could do this or what we should be doing and how you consider this to be a difficulty for the whole process?

Mr Greene—Certainly. First of all, we were surprised that interim orders were excluded. There is nothing in the government policy that would warrant such a provision being drafted, so it has sort of come out of nowhere. We were surprised that the shared parental responsibility was excluded from the consideration of interim orders.

You will probably have heard this in this inquiry but you certainly heard it in your last inquiry. Generally only five per cent of cases end up before court for a trial. The evidence I gave at the last inquiry is the same as I am going to give now. Overwhelmingly, the majority of cases have some kind of interim order made along the process. The creation of that interim order may end up meaning that the case will never go to trial because the order is such that it is too difficult to overturn it or because it might be practical and acceptable for the parties so they never go to final trial. But in many cases it sets what is called a status quo principle. That status quo principle is generally upheld by the court even if that court hears it in six, 12 or 18 months' time as a final trial.

We do not know where this provision has come from. It has certainly come out of the blue. We are concerned that, even though they have included in there that, notwithstanding that an interim order has not addressed the issue of parental responsibility and when it is time to make a final order the court will address it then, it is saying that the court cannot have regard to the fact that they did not consider it then. I guess what I am saying is: what is the point? I think that all hearings, whether it is an interim hearing or a final hearing, have an impact on the family from that point on. I think that the processes that you are going to employ in dealing with these need to be consistent.

But it touches on another issue which I think is a fundamental one. I think this is really something we have not discussed yet in these hearings. The policy is one thing. The draft bill has come out attempting to implement the policy. We find there is a major deficiency and I think it should be pointed out. The Family Law Act that is in existence now is not that bad. Under any general reading of that as a layperson, you would think that a shared parenting order should have come out of this because it says straight up front in the object section of the act that parents are

required to share the duties and responsibilities of bringing up their children. You would think in that instance that it would.

Where that act has caused a difficulty is in the case law precedent that has been developed over 30 years. The point we are making in our submission—and I think this is something that needs to be clearly identified—is that, even though there are new provisions and amendments made for providing for the government policy, I have not yet seen and have been unable to identify a provision in there that legislates away the case law that prohibits this occurring. I do not have the cases before me today, but I can get a list of the case law precedents that impact here if the committee so desires.

Mrs HULL—Yes, we would like that.

CHAIRMAN—Would you provide that to the committee secretary, Mr Greene?

Mr Greene—Certainly, I would be happy to organise for that to happen. I think this is something that your committee, Mrs Hull, was certainly conscious of. The court has taken a position in the past that, if there is conflict between the parents, it cannot make a shared parenting order. In other words, if one of the parents wants something different from what the other parent wants, the court considers that to be a conflict and that conflict prohibits a shared parenting order. Those case law precedents need to be legislated away.

I think we have touched on this in recommendation 14. This is very important, because recommendation 14 covers the capacity to get orders right and consider the circumstances as they exist. Where circumstances come before another final trial, what we are saying in that provision is that, notwithstanding what the previous living arrangements or other arrangements were, if it is generally practicable and sensible and appropriate that the court—it could be a tribunal or family relationship centre, but in this case it is the court—considers that the circumstances exist for a shared parental responsibility, they should consider a new order that allows the parties, or the mother and father, to equitably share the children, notwithstanding what has been in place before.

So that is another piece of case law precedent that needs to be dealt with. Others include changed circumstances—what is considered a change in circumstances. This is the start of a long conversation. To assist the committee, we will prepare over the next 24 to 48 hours a list of the case laws as they impact and how they have not been legislated away by this bill. It is all well and good to write some legislation that tries to implement some policy, but this is not the only legislation. We are looking at 30 years of case law precedent. We are looking at a whole range of processes that need to be addressed and considered and not just how this bill amends the Family Law Act.

CHAIRMAN—And you are dealing with entrenched judicial attitudes, too, presumably?

Mr Greene—That is true, and I think that has come up. It needs to be recognised that there are some jurisdictions that are doing better than other jurisdictions. For example, my experience is that the Queensland Family Court jurisdiction is in most cases operating quite well. In most cases there is some kind of shared parenting order, once they are applied for and the hoops are jumped over. The court itself has even responded to the process of this inquiry over three years,

and it is making more shared parenting kinds of orders. There are other jurisdictions, like the Adelaide registry, that are a long way behind—they almost never make them.

So there are differences between the jurisdictions. Again, this is one of those issues that come down to equity and fairness for the parents going before the court. If everybody has a fair idea that, under normal circumstances, I am a fit parent, she is a fit parent, we both love our children and they both of us, we both live in a reasonable arrangement, we both have the capacity to take them to the same school and to share the same extracurricular activities—

Mr KERR—What are they doing it for?

Mrs HULL—Something happens.

Mr Greene—Unfortunately, somebody has the capacity under the current law to take a position. There is not equality before the system. That is the basic principle. If everybody is equal and everybody knows where they stand, you are going to reduce the number of people going to court dramatically. I think family relationship centres—it was part of our submission that there be a mandatory mediation process—are the mechanism to deliver those outcomes. That is why we say that, on the whole, the policy position is right.

Mrs HULL—When we were doing the inquiry and after sitting day after day in family courts it was obvious that if the current family law legislation were followed we would not have the problems were having; it was the case law that was the major issue. That is why it does not get followed and that is why it is so precise, to be able to determine how best we can overcome those issues. Thank you for raising that.

CHAIRMAN—I am concerned by what you said—that the Family Court in its various manifestations around the country seem to have different entrenched policies. Has your council contacted the Chief Justice of the Family Court in relation to this matter? There must be some system within the Family Court to have moderation.

Mr Greene—We attempted to have discussions with the previous Chief Justice and did not achieve a meeting. Wayne may be able to add further to this. Wayne has been very closely involved with the courts, particularly in relation to the provisions that they have sought to have implemented. It might be best if Wayne answered that question. But, yes, there is dialogue there.

CHAIRMAN—There is a new Chief Justice.

Mr Greene—I think that has made a big difference as well.

Mr Butler—Thank you, Geoffrey. I may take a moment, if I may, to comment on that particular question. With the completion of the House of Representatives report and the publication of *Every picture tells a story* and the excellent appointments of Deputy Chief Justice John Faulks and Chief Justice Diana Bryant by the Attorney-General there has been quite a range of reforms commenced within the court system itself, particularly over the last 15 months. There has been the self-represented litigant program agenda and a reform group running within the court looking at how self-represented litigants will work with the court.

We have been able to have a couple of meetings with Justice Faulks in chambers in Sydney. We have also seen Justice Faulks, through Chief Justice Diana Bryant, commission an independent study through a Queensland consulting operation to look at comments from various parties that have been through the Family Court and the Federal Magistrates Court. All of that has been completed and there have been some quite interesting announcements in recent months.

Firstly, there is the single registry concept and the announcement by Justice Faulks that he wishes to implement the children's cases program as the primary means of dispute resolution in all hearings. I think that is an excellent outcome. We have also seen a whole raft of measures that John Faulks particularly is implementing through the Family Court rules themselves. So the bottom line is that there has been a great uptake of this swing to a more open and more just system within the court system itself.

Mr PRICE—I have some difficulty with the concept that you are talking about of serious family violence, although I understand where you are coming from. Maybe it is very naive of me but, in our own state of New South Wales, where a magistrate issues an AVO, would it be helpful if the magistrate indicated whether or not it was appropriate for the party or parties to go before a family relationships centre—in other words, so that the AVO is not preventing mediation?

Mr Green—Yes, that would be an excellent idea—indeed, a similar thing is done now. When a magistrate now deals with an AVO, that magistrate has the power to attach conditions or to eliminate them. There are some standard conditions attached to the AVO form itself. Sometimes the magistrate, in cases where he or she considers that the interests of the case, the children or the custodial parent call for it, will exclude any contact whatsoever, even through legal representatives and counselling mediation. That is obviously done for good reasons. But in many cases, in my experience of mediations, that clause is left in—that is, excluding all contact or approaches between the parties except through a legal representative and for the purpose of effecting access to the children, or some wording to that effect. The introduction of more specific provision relating to the continuing availability of the family relationships centres would be marvellous—it is an excellent suggestion.

Mr PRICE—So we could pick that up legislatively and hope that they would have a mind to take it into consideration.

Mr Green—Of course.

Mr PRICE—Michael, the other issue I wanted to raise with you relates to the situation where parents successfully negotiate a parenting plan and it becomes a parenting order. As you know, it can start off very well and then there is a failure by one party or the other to adhere to those parenting orders. In your opinion, will the family relationship centres be able to handle those failures without it going back to court?

Mr Green—Yes.

Mr PRICE—You are confident that those centres will be effective in those cases?

Mr Green—Absolutely. We have been very strong on this ever since the introduction of family relationship centres as first-stop shops—if I could put it in such brutal terms—which

amounts to a wonderful reform. We argue strongly that, if these family relationship centres are properly established and properly resourced and, as far as human endeavour can ensure, the right people are chosen for this very difficult work—and they are given proper facilities and paid proper money; all of that—then I believe, and I think we believe, that there will be much less than the current five per cent of cases going to judicial hearings.

Mr Price, I come back to the example to which you directed my attention: the breakdown of parenting arrangements. I think they will handle this if they are properly resourced and set up magnificently. One worry that just occurred to me is when the parents have already exhausted the time that has been suggested; I think their free time at the relationship centres is three hours.

Mr PRICE—Yes, three hours.

Mr Green—Will they be deterred if there is a fee for another attendance? I hope that could be considered by the committee because, certainly, public policy and public education should encourage them to go back. The whole idea of the government's reform, the report, the discussion paper and this bill is to encourage people to do that first before running off to lawyers and the adversarial process. Incidentally, it is important to realise that in our legal system the adversarial process does not start when people go to court; it starts when each of them goes to the office of an opposing lawyer. Under our legal system, if I am a lawyer I am required to consider not necessarily the whole benefit, the whole family's interests, but the interests of my client within the law.

Mr PRICE—Could I raise with you that I share all your hopes and aspirations about the centres, but the likelihood is that they will be put out to tender and that different organisations will win different sections of the tender. In the Commonwealth, in trying to get uniformity of practice and what have you, a contract officer will be administering the contract. It is not as though we are setting up some new Commonwealth department, with a chief executive and Commonwealth officers whom you would hope would be uniformly acting at the highest levels of public endeavour. I guess the point I am making is that there is a potential for it to be, in fact, quite disparate: good in some parts and horrible in others.

Mr Green—That is, regrettably, the human situation. There cannot be any policy or legislation that overcomes all of those human problems. However, the principle is there. The new principle is that they are directed to go there first.

Mr PRICE—Absolutely.

Mr Green—It is not just a Family Court rule. They are directed to go there first. Indeed, they meet up with a counsellor and/or a mediator or whatever. I would hope that the people looking at the establishment of the centres—the policy makers and legislators—would take the move towards accreditation standards and the accountability of the people and the organisations concerned very seriously indeed. Further than that, I would hope that public education would engender a mood in people for what the government obviously intended: that people look seriously towards not just their own interests after separation and divorce but what is good for their children. Roger, good work is already being done in the organisations that you have mentioned. With extra funding, accountability and extra resources, that is surely something that can be built on.

If I may, let me add something that has just occurred to me. The vast majority of separating parents are good, decent and sensible Australians. They are not violent men and women; they are not stupid, sick, psychotic or paranoid men and women. There is a tendency at times to associate violence and conflict with separation and divorce as if they went hand in hand. I reject that absolutely. It is not my experience and it is not the experience of right-minded practitioners in any of these fields. Regrettably, I have heard politicians and various commentators say that separation and divorce almost inevitably involve an element of abuse or violence. That is absolute and errant nonsense. The great majority of separating parents, as troubled as they are—and it is a difficult time; of course emotions run hot at times in the early part, of course there is sometimes anger present and of course mistakes are made—need to be encouraged by legislation. They do not need the protection of overly restrictive provisions in legislation.

CHAIRMAN—Just before I ask Mr Cadman to ask questions, you mentioned three hours in your view as being insufficient. What period of time should the three hours be replaced with?

Mr Green—Oh dear, this is a difficult question. I am sorry that you have caught me on the hop here. Having no time limit is of course a great and fairytale kind of wish. I respect the problems that any government has in the resources and the money that is available for the establishment of centres such as this. There obviously cannot be an open chequebook. We are all taxpayers. I do not know if I can sensibly answer that. I would just ask the committee to look at that problem.

Sometimes a separating couple will only need an hour of good advice. Sometimes, initially, they might need two, three or even more. It is an individual thing. Should they, as in some legal aid systems, be asked to make a financial contribution? I do not think that is out of the question at all. But, while insisting that the government and the legislators do their best to ensure that those who really need it get this early intervention, whether it is right at the beginning of the separation or during the breakdown of a functioning parenting agreement, it is much cheaper for the government to put its resources there than to allow courts, magistrates and judges to expend government money further down the track.

Mr CADMAN—Briefly, Mr Green, section 60KI is one that has caught my attention, particularly subclause (3), which relates solely to Aboriginal and Torres Strait Islander children. It seems to me that, because hard evidence across jurisdictions is hard to gain, that provision, which allows the Family Court to take into account other courts and tribunals, would be particularly applicable in gaining evidence about violence or abuse. That provision ought to go across the whole gamut of people appearing. I do not know what the limitation might be on that happening.

CHAIRMAN—Is there any constitutional limitation?

Mr Green—I do not know. Could I ask my colleague to answer that? He has that in front of him. Would you mind if I asked Mr Butler to direct his attention to that?

CHAIRMAN—No; that is in order.

Mr Butler—The issue there, from my reading of it, is that you feel that that is constrained too much to a single group. We have had a look at the issue of expanding that to all child focused

groups instead of just Aboriginal and Torres Strait Islanders. After all, we are a very multicultural society in Australia. We have parties from all over the world as residents and good citizens in Australia. The conclusion that we made in discussions earlier in the week was that it could be widened to cover all children.

Mr CADMAN—You do not detect any impediment to that happening?

Mr Butler—I did not see anything when we looked at that closely.

CHAIRMAN—And you think it would be desirable for that to be expanded to all children?

Mr Butler—I think so. I do not see any need for it to be related solely to Aboriginal children or Torres Strait Islander children, which this specific section directly refers to.

Mr CADMAN—Thank you. That is very interesting.

CHAIRMAN—Are there any other comments, Mr Greene, Mr Green and Mr Butler?

Mr Greene—In summary, I would like to thank the committee for allowing us to give this evidence today. It is a difficult job. You have what we believe to be fantastic policy. You have a very complicated piece of legislation. We have highlighted, in our submission, the range of our concerns. We believe that if you can address those concerns from the perspective that we are coming from at these hearings then you will deliver a fantastic outcome for the children of Australia.

CHAIRMAN—Thank you very much. The secretariat will send each of you gentlemen a transcript of what you have been recorded as saying. Please check that and send that information back to the secretariat as soon as possible. On any other matter on which you have undertaken to give us some material, it would be appreciated if we could have that material as quickly as possible, given the reporting deadline. Thank you very much for your attendance.

Proceedings suspended from 12.31 pm to 1.02 pm

CARTER, Mr James Bernard, Adviser, Lone Fathers Association Australia Inc.

WILLIAMS, Mr Barry Colin, National President and Founder, Lone Fathers Association Australia Inc.

CHAIRMAN—Welcome. Although the committee does not require you to give evidence under oath, I should advise you that hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We have received your submission. Is it the wish of the committee that it be accepted as a submission and authorised for publication? There being no objection, it is so ordered. I now invite you to make a brief opening statement and then we will ask you some questions.

Mr Williams—The Lone Fathers Association has been going for 32 years this year and we have 18 branches throughout the country. Firstly, I want to congratulate the committee for the excellent job they have been doing and for the bill. But I cannot give too much praise because there are a lot of grey areas in the bill that we believe should be tidied up, and we hope today that through our speaking to you and through our submission we will be able to cover some of those grey areas.

I must say I have to pass on some comments, especially from our South Australian branch, who supplied the committee with a submission. The committee acknowledged that they got the submission but evidently, from what I hear, they sent it three times and the committee lost it three times and they were told they were not allowed to appear. Also, one individual in South Australia, Dr David Hudson, declared that he sent a submission and was told that he would not be allowed to give evidence because you had already decided who was going to speak before the cut-off date. That is what was passed on to me from South Australia.

CHAIR—I understand that the committee does not accept exactly what you just said as being the case. I am not aware of the circumstances. I am more than happy to check on them and talk to you privately. We have sought to have a representative range of people give evidence to the committee. Given the time frames under which the committee had to operate—very tight and difficult time frames—we could not allow everyone who wanted to to appear before the committee, so we have tried to get a cross-section. One of the reasons why you are here, Mr Williams, is because we thought you would be a keen advocate and have some commonsense for the committee to take notice of.

Mr Williams—I was only passing on, as I said, what I was told.

CHAIR—I appreciate that.

Mr Williams—I did hear from other people. We are a big organisation. We get 30,000 calls per annum, and I know there are people out there who are very upset about the three-week time frame that was allowed for the committee to be able to hear these views. This is a very important—

CHAIR—Mr Williams, in a perfect world I suspect the committee would not have objected had we been given more time as well; however, to defend the Attorney, he is particularly keen to get this legislative reform into parliament and he wants to get it right. I suppose it is a question of the desire to get it right versus the fact that this matter has gone on for a considerable period already. Let us go back to your opening statement.

Mr Williams—We pointed out what we believe are the four main areas of the bill which we have grave concerns about. We welcome it and we think that the 65 relationship centres will bring about a change in family law throughout Australia. It probably could be one of the best systems in the world judging from what we have looked at. However, in stating that we also, as I have said, have areas of grave concern. The first concern is about who is going to run these services. As we have stated previously, it is great to set up a new service. We set up the Federal Magistrates Court, which proved to be of no help in the long run because it has no teeth. The Family Court again can overrule any decision made by the Federal Court, and some people are very frustrated.

CHAIR—Over the Federal Magistrates Court, you mean.

Mr Williams—Yes. That was another tier that the government set up and it was supposed to be the bread and butter to resolve all the custody and access disputes. Unfortunately, it has not lived up to expectations, and we are hoping that the 65 family relationship centres will come in and do a better job where the court has failed.

CHAIR—With respect to the Federal Magistrates Court, I have only previously heard praise about it. If you have some views indicating that it is not working as it ought to be and want to pass them on to me, I will be more than happy to pass your views on to the Attorney-General.

Mr Williams—The area we have found not to be working is the enforcement of access, which has been a big problem. In other areas it probably does work, but the greatest concern we have is that people go to the court and they walk out with the same outcomes they went in with. We believe that the 65 relationship centres will change that. But, as I said, it depends on who runs them. If we have the same people running them that are running the system now, we will end up with the same outcomes. We have to be very careful about the training, the expectations and the ability of these people to run these services. We believe that they have to use and help the grassroots services like ours and other organisations who are working with these people. It is the only way it is going to work.

The problem with people in Australia is that in every marriage relationship that breaks down they believe that one parent needs counselling. It is not true. They do not need counselling; they need to know their rights under the system. We now have a no-fault system and a Family Court where one person walks out a winner and another walks out a loser. It is one of the grey areas of the system.

We would like to discuss the wording of the shared parenting bill. Since the bill came out, I have travelled to Queensland, South Australia, Sydney and other areas asking organisations what they think. They have all come up with the one wording: it should be ‘equal parenting time’. We should not use the word ‘substantial’ in any shape or form because ‘substantial’ could mean 90-10 or something like that. The court works now on substantial shared care and they believe that

by giving one person custody and one person access it is substantial shared care. It is not. We believe that as a starting point the words should say 'equal parenting time'. People would then look at the law as being at least fair to both of them if they had equal parenting time as a discussion at the table and could then work out why it can or cannot work.

We know that in many cases completely shared or equal parenting would not and could not work because of the vast distances apart from each other that people live. But there is no reason why it cannot work in places like the ACT, country towns and places like that. Where one parent might want it and one parent might not want it, we hope that the 65 family relationship centres would be able to sit down and say, 'Give us reasons why you don't want the other parent to have equal parenting.' It came out loud and clear that the words 'substantial time' should be deleted completely and should never be used.

We went on to say that in the existing legislation, whether we like it or not, the law does discriminate against one parent. In doing this it also discriminates against, and does not uphold the rights of, the child. Any court that you go to where the court says, 'You will be the custodial parent or the resident parent and you will see your children every second weekend or half the school holidays, but you will pay a substantial amount of money for those children while they are not with you', is not the rights of the child. We are discriminating against the rights of the child. Our own legislators and our own courts are discriminating against the rights of the child. It is so bad that I intend, if possible, and if I can get the support of other groups, within 18 months to take a class action to the High Court against the rulings of some of the courts. Politicians who made this legislation have to take some blame for it, too, for all the children who have suffered or who have been killed in de facto families because they have not been protected by the other parent, mainly the father.

CHAIRMAN—Sometimes it is not the legislation; it is how the court interprets it.

Mr Williams—That is right. But, as I said before, the Family Court in all its wisdom—I know it tries to do the right thing—is actually a hindrance court, not a helping court, because one person will walk out a winner and one person will walk out a loser.

The other part that I want to quickly touch on is the removal of the child from the area of the parent. The bill must state that it is illegal and an offence to remove the children great distances from the other parent, unless that parent has given their approval or the parent who has moved the child away has orders to do so from the court. A court may only do this if the parent the children have been taken away from has been proven to be a danger to the child and has been charged and convicted—not just on allegations, which occurs now.

LFA and other associated bodies cannot express the above concerns strongly enough. The reason is that courts very seldom force the parent to bring the children back to the area of the other parent. I must say that in 32 years I have never seen a court force a parent who has taken the children away when access orders are in place to bring that child back. The court will say, 'They've gone to better their own lifestyle and the children's lifestyle.' It is not bettering the children's lifestyle; it is discrimination against a child. Out of the 30,000 calls we get, we get calls periodically from young children asking us to help them see the other parent. They want to see the other parent, yet we have to tell them that we are not allowed to speak to them unless one parent gives us the—

CHAIRMAN—Just one thing, if I could interrupt you: you were here during the evidence of the Shared Parenting Council of Australia. As part of that evidence they put recommendation 16 suggesting that section 68F should be amended to provide as follows:

"Should a parent wish to change the residence of a child in such a way as to substantially affect the child's ability to reside regularly with the other parent and extended family, the court must be satisfied on reasonable grounds that such relocation is in the best interests of the child."

I take it from what you are saying that you would agree with what the Shared Parenting Council was saying.

Mr Williams—Yes. At the moment that is all written in the law but it is not acted on. The court will very seldom make an order against a resident parent to bring the children back.

Ms ROXON—I have a question taking the same line as the chair's question. One of the witnesses that we had via video link—I think you were here for this—is a practitioner from Queensland. He seemed to be suggesting quite the opposite.

Mrs HULL—No, he wasn't.

Ms ROXON—Let me put the question to the witness, please. He suggested that orders were made quite often if consent was not obtained by one party to remove the child to another area and that in his experience quite often orders were made that people needed to return. I think you were here for that evidence. Is your experience obviously contrary to that?

Mr Williams—Yes. A lot of our concerns come from the Queensland area. We are told that in actual fact it is one of the worst laws in Australia, even given Western Australia's, given the way the courts there rule. We have witnessed cases—these are cases on our records—where this has occurred and where the children in the care of the mother in the de facto relationship to which she has taken off, and taken the children, have been sexually assaulted, physically assaulted or in a couple of cases killed by the de facto husband when the father has had no right to protect his children.

Mrs HULL—It is my understanding that the family law practitioner indicated that it was in place that the courts would order that a person who had relocated without permission should come back. But the point that he was making is that after they come back and face that hearing it is not often that you would see it upheld that they would have to return to that place of residence. Yes, they were forced to come back for the hearing, but generally the outcome of the hearing—and I think this is what Mr Williams is saying as well—is different. The outcome of the hearing generally establishes that the child, for whatever reason, has settled into that new place of residence and moved into a school, so the court does not want to uproot the child again. I think that there has been confusion about what the family law practitioner said this morning.

CHAIRMAN—While the *Hansard* will no doubt have what was actually said, my understanding was that he said that sometimes the court would not order that the child be returned to the former area of residence and that sometimes it gave reasons that he simply did not agree with—but everyone is highlighting that it is a problem.

Mr Williams—It is a problem in Queensland. We started a branch at Atherton and we have branches at Cairns, Rockhampton, Emerald, Mackay and Brisbane. They are all reporting the same thing: that in actual fact the courts do not. As Kay said, the courts will look at it but in most cases they will determine, 'As the child is now settled in, we are not going to upheave the child and being them back,' whereas the other parent's rights have been discriminated against and so have those of the child. If I am right as to the rights of the child and the paramount interests of the child, which we in this country preach so strongly, then the rights of the child and the paramount interests of the child are to have a meaningful relationship with both parents—and we must not get away from that.

Frankly, we are seeing children in this country growing up with terrible psychological, emotional and social problems because they are being kept apart from one parent. Vested interest groups are doing this. This is why we are so concerned that, when we get these 65 relationship centres—and we do believe they can work—you must have the right people running them. That is a very big concern. The Attorney-General said that the people most likely to be running them are the people who have the most capacity to run them. Frankly, the people who might have the most capacity are not the best people to run these centres in order to have a positive outcome. We must put the children first at all times.

CHAIRMAN—Could you elaborate a little on who you think ought not to be running these centres?

Mr Williams—You are putting me on the spot! Some of the big counselling services have been accused of a lot of bias towards one party and stuff like that. I can only report to you what comes to us through the great volume of calls we get. We are taking in excess of twice the number of calls that Mensline take in Australia. It is a great number of calls for an organisation like ours, which has no paid staff, only volunteers. These people write down what they can on the calls that come through. Most of them end up in our national office in Canberra. I have to take up most of them on their behalf. I have taken up cases on their behalf with the Family Court and the Child Support Agency by the hundreds. It is not getting any better. What I am trying to say is that we welcome the 65 relationship centres and we would like to work with people to get them up and running, but we do not want it to be a waste of taxpayers' money with another tier that is not going to work. It has to have more teeth.

I noticed in another part of the bill the enforcement of orders. It is very wishy-washy the way it is. It does not come straight out and say: if a person denies the other parent that contact, we are going to come down hard and use the laws that are in place already to punish that person. That came from the last Chief Justice, who has resigned now. In 1990, my organisation was congratulated by Gareth Evans for introducing the laws of contempt. We put up the submission that brought the laws of contempt into Australia. Straight after the day it was announced, I was asked by the government to do an ABC program with the Registrar of the Family Court in Melbourne, who was a lady at that time. She said that if people came to the court and had denied access on more than one occasion, she would put the full force of the law on these people. They would be charged a $2,000 fine and made to do 500 hours of community work. There would be a reversal of custody if they kept going or even a jail sentence.

It happened that one lady was jailed in South Australia for this. She was given two years but, within three weeks, the women's movement lobbied so hard outside that they released her. Our

Chief Justice at the time stated that they would not impose these penalties anymore because it was too harsh on the mother. This is what we are saying. If the Chief Justice can overrule an act of parliament then there is something gravely wrong with our system.

CHAIRMAN—That brings me to something the Shared Parenting Council mentioned—that is, a concern about 30 years of accumulated case precedent. While the Family Law Reform Act 1995 is not a bad sort of act, the way the law has been interpreted since 1975, when the first act came in, means that we have to look at not only the provisions of this draft bill but rather how prior case law might strangle this draft law before us in a way that would make it unworkable, regardless of what the parliament puts through, unless you get rid of that case law precedent.

Mr Williams—That is true. We agree with that wholeheartedly.

CHAIRMAN—You listened to the evidence this morning by both the Family Law Practitioners Association for Queensland and the Shared Parenting Council. In particular, do you agree with all that the Shared Parenting Council said, or where do you disagree with them?

Mr Williams—I am the first vice-president of the Shared Parenting Council but I could not come to terms with them using the word 'substantial'. I do not know whether they are still going along with the word 'substantial'—I have been away in Sydney on the weekend and I apologise, I was not listening to the hook-up. But the Lone Fathers Association, the Fatherhood Foundation, Parents Without Partners and other groups that make us by far the largest group in Australia—we have more membership than all of the others put together—have all declared they will not accept the word 'substantial' because it gives an opening for Family Court judges to say, 'I am giving substantial time; even if I am saying it is 80-20 it is still substantial time. What more do you want?'

Mr TURNBULL—Where is this word 'substantial'? This is in section 60B, is it?

Mr Williams—Yes. Other than that I think we fully support the Shared Parenting Council bill. One other area that I would just like to touch on is the concern we have that in cases of violence the 65 family relationship centres will direct the couple to the Family Court. We would like to see that tightened up to say that the violence has to be proven and the accused person has to be found guilty, convicted and charged.

Too often now we see mere allegations used as a tool to deny the other parent contact with their children. I must say that we were greatly disappointed in the states about the domestic violence laws that they allowed to be introduced into this country just recently, where we are finding people being forced out of their homes on allegations alone. I have seen it in the last couple of weeks. Without mentioning the person's name, one of the chief magistrates asked us to fight this law of domestic violence because he said it was illegal and discriminatory. In relation to what that man said, in a case where I helped a person who was tossed out of his home through a mere allegation, I got him to go to court the next day and put a countercharge against the other parent. The magistrate in his wisdom actually made this comment: 'This is ridiculous. This was a mere allegation and the charge should never have been put on this man. I am dismissing it immediately.' And his words were: 'We are in for big trouble if this is what is going on all around Australia.' That was in the ACT courts.

CHAIRMAN—Evidence was given to the committee last week that there is almost no level of false allegation about abuse or violence made by a party with a view to outmanoeuvring his or her partner. Do you have a comment? From what I think you were saying in your experience there are false allegations, and we have had other evidence today to that effect also.

Mr Williams—There are lots of them. Violence is a very big, open word: there is physical violence, mental violence—any sort of thing. You look at someone sideways now and it is violence. It has just got out of hand. And there is too much violence. We as an organisation do not support violence in any shape or form. There is violence against women, there is terrible violence against children, but there is also—virtually equally—violence against men in this country, which we do not seem to accept. Studies all around the world have shown that violence is contributed to, in some cases fifty-fifty, by both men and women, but many of the statisticians and the organisations in this country do not want to accept that it could be equal.

CHAIRMAN—There was some questioning last week, and Mr Cadman may have led that questioning, suggesting that blood relatives—that is, mothers or fathers—were less likely to commit violence on their children than de facto partners. There have been some cases where, because of a concern over some level of violence from him, a father has been denied contact but the child has actually been injured by the mother's new de facto. Have you heard of any of those cases?

Mr Williams—Yes, many cases. That is true. We have even heard that children have been sexually assaulted. It gets reported, but to an organisation called DOCS, the Department of Community Services. They have a very poor record of following these up and doing anything about them.

If I may, I will tell you of a case which involved my own family. Recently, my oldest nephew was bashed to death. He was hit five times in the head while he was asleep. The person who did it was charged with first-degree murder. The police pressed for that. The witnesses said it was first-degree murder. When it went to court, the judge, in his wisdom, said, 'I feel sorry for the woman,' and she did 2½ years. She had two children. The children were traumatised and needed help. The children are with my daughter now. She became the foster carer. The mother is out of jail now. She did her 2½ years. She is allowed to rule those children and put things in their head. The eldest child badly needs counselling. They have asked DOCS—it has to go through them—to arrange that counselling, but they have refused to do it. DOCS have a very poor record of helping children in those situations.

CHAIRMAN—I am very sorry to hear about that tragedy involving your family. Is DOCS a state department?

Mr Williams—It is the New South Wales Department of Community Services.

CHAIRMAN—While not within the terms of reference, if you have any evidence of failures by that department, we will be more than happy to pass them on to the relevant federal minister.

Mr Williams—I was so concerned about the children that I rang the Attorney-General, Mr Debus. I asked him how the judge could make such a—

CHAIRMAN—You got through to him?

Mr Williams—Yes. I had written to him. I asked him how the judge could give such a lenient sentence. He said that I was quite right. The judge found out it was first-degree murder. The way she exposed the body should have got her 10 years by itself. What she did was keep the body in the house for nine weeks and then got a backhoe and buried it. What she used to do was take off for four months at a time and every time she came back she would be pregnant. She would wait until the baby was near birth and then she would drink pure alcohol—a bottle of bourbon or something—to kill the child. Canberra Hospital told her after the last one that they were going to charge her with murder because that was the sixth baby she had murdered that way. Another person heard her say when the sister walked out, 'Little does she know, but that is the 11th'. What brought it on was my nephew saying to her: 'You have to go. I can't take any more.'

Bob Debus finished up by saying that even though I and many others believe it was first-degree murder, a judge said that he felt sorry for the woman and he gave her manslaughter. He said that manslaughter could lead to a sentence 25 years but in this case he thought she had suffered enough and he gave her 2½ years. I am trying to paint a picture of what is happening to children in this country.

CHAIRMAN—That is a very tragic case.

Mr Williams—I have not exaggerated in that case.

Ms ROXON—It is a very tragic situation. I know from my previous dealings with you that you are serious about wanting to combat violence in the community. But I find it pretty hard to reconcile that with pages 5 and 6 of your submission where it seems to me that you give virtually no regard to the circumstances of women when they are alleging violence. I have been looking through the attachments that you have provided in terms of documenting violence against men and women. It seems to me that the provisions that are in this bill will protect men and women if violence is an issue.

I am not really clear about what you are proposing on pages 5 and 6, particularly regarding the removal of violence from certain provisions within the bill. In my mind, your other comments about what should be divined as child abuse do not reconcile with the views you have expressed today. I know from my previous dealings with you that you are concerned about making sure that issues of violence are dealt with in the legislation. Can you spend a little time not on the individual examples but on the comments you make throughout your submission that you think there is excessive emphasis on the proposed definition of 'the best interests of the child' in domestic violence issues. How can there be excessive emphasis on that? Isn't that a vital thing for us to have when we are measuring what the best interests of the child are going to be?

Mr Williams—I will ask my colleague Mr Carter to answer that, because he is our researcher on violence.

Mr Carter—The truth of the matter is that there are two key considerations in this legislation, and the draftsman has been very clear about that. Those two considerations have been moved right to the head of the list. They are safety for all members of the family and the desirability of children having contact with both their parents. We see it as appropriate to have those two

considerations there. We are aware that other people have given evidence to this inquiry along the lines that there really ought to be only one consideration—that is, safety—and that that should be paramount and should overrule everything else. We do not think that that is a balanced approach, particularly in a society which apparently believes, if one reads the press or what ministers say—there are all sorts of statements made by all sorts of people—that only one sex is a victim of domestic violence. We see that that is not the case.

Ms ROXON—Would you just tell us which provisions of the bill you are concerned about that have placed excessive emphasis on violence issues? I am reading from the top of page 3 of your submission. Without worrying about what is in other submissions to us, it is our job to try to understand what each of our witnesses is urging upon us. I do not understand which provisions you are concerned about in reading through this and where you are suggesting we should remove the issue of violence or where it is going to lead to some unreasonable outcome as a result of this bill.

Mr Carter—No-one is suggesting that concern about violence should be removed from the bill—it should be there in a big way—but there are many places where there are degrees of violence, we believe, being dealt with in the administration of family law and, going beyond that, in the way in which domestic violence is handled through the criminal system. We have a fair bit of first-hand experience—so I am not talking from the basis of no knowledge—of a bias against men. We are really concerned to make the point in this legislation that it be interpreted in the right way and with the understanding of the actual situation we face.

Ms ROXON—Your submission is that, as far as the provisions in the bill that we are reviewing in this committee are concerned, you do not have any objection to the provisions that are being proposed that relate to violence.

Mr Carter—The legislation is still not final. I believe that the purpose of this inquiry is to check it out and make sure that it is sound in wind and limb in every respect and to—

CHAIRMAN—To make sure that it accurately and in legislative form enacts the government's response to Mrs Hull's committee report.

Mr Carter—Exactly, yes. So, in any further deliberations that take place about the bill and its various provisions, we are keen that the points that Barry and I have been making should be borne in mind, because they could be coming into individual sections and provisions of the act.

Mr MURPHY—Mr Carter, in your submission you mention:

… the LFAA is concerned at the inaccuracy of the claim made in a speech by a senior officer of the Family Court to the recent LFAA Conference …

Are you referring to Mr Richard Foster, the CEO of the Family Court, in his address to the national conference on 22 June?

Mr Carter—It is, yes. That comment is not directed against anyone personally at all, but it was a statement made by the most senior officer of the Family Court.

Mr MURPHY—I had a look through the exhibits you provided to this committee. You sent off a letter to Mr Foster last Monday in which you take him to task immediately for his comment that 'women are almost always the victims of domestic violence'—you quote those as the words that he used when he made that address. You said that the statement was seriously in error and that it was a matter of concern that the CEO of the Family Court should be inadequately informed about a matter of such importance as the administration of family law in this country. You went on to make the following link:

> If it is a view also held by Judges of the Family Court, there is a major credibility gap between the Family Court and (1) the many fathers who have themselves … been the victims of unacknowledged violence and/or abuse and (2) the many fathers who have had false allegations of abuse and/or violence made against them and as a result lost contact with their beloved children.

Have you had any response from Mr Foster to that letter? They are quite serious statements.

Mr Carter—Yes, they are serious statements. That letter was sent almost at the same time we were finalising evidence for this inquiry. We would have allowed a more decent interval between the two events, had there been time, but it did not turn out that way. I might say that that letter was written in response to an invitation by Mr Foster. We had a conversation with him about what he had said at the conference and congratulated him on the excellent presentation that he made—but with that one qualification, which turned out to be quite an important one, because these sorts of cases are being dealt with in the courts all the time.

Mr MURPHY—What was his response as CEO and did he accept that judges of the Family Court held the same view? I say that because I know that tomorrow we have a number of judges from the Family Court appearing before us and I am going to ask them about it.

Mr Carter—Yes, by all means. As I said, timing has prevented us from sequencing those events in the best possible way. The answer to your question is that Mr Foster has not got back to us yet so I do not know. We might very well ring him this afternoon.

Mr MURPHY—Yes, because as I said it is quite serious. You also go on to talk about the professional development program for family violence workers, saying, 'If the court has such a program in place, it will be bound to seriously distort court judgments and hurt families, particularly fathers and their children.' Further, you talk about false allegations and the domestic violence crisis services sector. I realise there are time constraints today, but you said in this letter to Mr Foster that you would appreciate the opportunity to discuss the above issues with him. Bearing in mind that tomorrow we are going to have their Honours here to respond and I will be asking them about this, as no doubt my colleagues will, would you like to amplify in the short term your concerns about that professional development program and the false allegations? Also, if you want to say something on the myths about domestic violence, which you have mentioned in many submissions—we need to know that.

Mr Carter—These are not statements made off the cuff; they are based on substantial research. In fact, we have provided you with a summary of the 70, I think, major academic professional studies that have been conducted in the English-speaking world over the last 30 years, and they all come to the conclusion we have referred to in our letter to Richard Foster. As

for what the judges will say tomorrow, we will probably cop a bit of a drubbing, but we will have to see what happens.

Mrs HULL—I was quite confused, Barry, by your comments about the Shared Parenting Council's comments on the word 'substantial'. The submission from the Shared Parenting Council says:

The reference to "substantial" is not adequate and equal time or substantially equal time is more appropriate in the context of the intent of this Bill to comply with the Government's policy.

What don't you agree with there? I was confused by your comment that you did not agree with the Shared Parenting Council on the use of the word 'substantial'.

Mr Williams—I must be honest and state that we have had many hook-ups between us and there has been dissent on the word 'substantial' from my organisation, the Fatherhood Federation and Parents Without Partners. As I said before, in even putting it that way—and I think you said 'equal time' or 'substantially equal time'—people, in doing their determinations, could say, 'I did my job because I am giving substantial time.' When you look at the word 'substantial', it can mean anything. It can mean 90-10 time to one parent against the other parent or it could mean 80-20 or something like that. We are very concerned about that word.

Mr TURNBULL—You would prefer it just to be a presumption of equal time?

Mr Williams—You cannot have a presumption because the committee that Mrs Hull chaired before could not come up with a rebuttable presumption.

Mrs HULL—No, that was about equal residence. This is about parenting time. We did not go with a rebuttable presumption of 50-50 custody, basically. But we are talking about parenting time now, which does not necessarily mean residence.

Mr Williams—We are talking about parenting time. People are saying that going to the Family Court is a waste of time. Solicitors even tell people that it is a waste of time because, unless you can show that you are going to be able to do this or that, you are going to end up with access anyway. We are saying that, if you use the words 'equal parenting time' as a basis to start with at least, everybody out there is going to feel that at least they have had their chance to go there and talk about why they should have equal time.

Mr TURNBULL—Can I interrupt you. Can you go to section 65DAA of the bill. You would like to delete 'substantial' there and insert 'equal'—is that right?

Mr Williams—Yes.

Mr TURNBULL—And then, over the page, you would in effect replace 'substantial' with 'equal'. Is that basically what you are saying?

Mr Williams—That is right. We are just concerned about the word 'substantial'.

Mr TURNBULL—I am sorry to go back to it but we just wanted to be clear on what you were proposing.

CHAIRMAN—And, to be clear, the reason you are concerned about it is that 'substantial' could mean 20 per cent only, or it could mean 10 per cent or 15 per cent or 30 per cent?

Mr Williams—Yes.

Mr Carter—My understanding of this is that 'substantial' in the minds of judges and the administration of the courts at the present time would allow 10 per cent or something like that. If we are using a word which means one thing to us and something quite different to members of the Family Court, we are heading for trouble.

Mr MURPHY—It is a bit like 'significant'. Five per cent can be significant.

Mr Williams—That is right.

Mr TURNBULL—I think it is important to bear in mind that the opposite of 'significant' is 'insignificant'. It means that anything that is not insubstantial or not insignificant would be caught. So your point is a powerful one.

Mrs HULL—I think it is very valid, and that is why I wanted to raise it again. I wanted to determine exactly what you would want substituted for that word 'substantial'. The word that, clearly, you would like substituted for 'substantial' is 'equal'.

Mr Williams—Equal parenting time.

Mrs HULL—Yes, that is right. That is what we are talking about.

Mr PRICE—Would it help, Barry, if in the explanatory memorandum we explained what 'substantial' means?

Mrs HULL—Well, what does it mean?

Mr PRICE—Well; quite. 'Substantial' does not mean 'equal'; let us be clear about that.

Mrs HULL—That is right.

Mr PRICE—If you are putting in 'equal time' it is quite different from what we have discussed today.

Mr Williams—What you are missing is that that is only a starting point. Maybe I can put it another way. We know that only six per cent of all cases go to the Family Court. But our records show that 83 per cent of those cases will favour the mother, regardless of whether she is the best parent or not. It was only five years ago that they said, 'Hey, we are improving; 20 per cent are going to fathers now.' Twenty per cent against 80 per cent; that is where we are saying it is not a system of fairness. There are lots of people out there who have gone to the court, and one person desperately wanted equal time but the court has said 'no'.

Ms ROXON—What is the percentage of fathers who are primary carers for children in intact relationships?

Mr Williams—The percentage in Australia? I do not know, to be honest. I know that there are more now than ever before—

Mrs HULL—In intact relationships, you say?

Mr PRICE—Barry, if I could make this point to you: even if it said equal time there, point 2 of that subsection says it does not apply if it is not reasonably practical for the child to spend substantial time with each of the parents. It may be practicable for the child, but often it is not practicable for the parents.

Mr Williams—Yes, Roger, but I am saying it is then up to both parents to decide whether they want it. They should have the right to it if they want it. They have not got that right now. What you have all missed, too, is that it is going to counteract the new recommendations of the child support task force. Where they say that they are working towards close to equal time in these recommendations, when it can possibly happen, there is going to be an overflow of questions about how child support is going to be paid and everything. They also have to be taken into consideration.

Mr PRICE—All right. I will not go down that path.

Mr SECKER—In page 6 of your submission, you talk about the fact that the proposal to make cost orders against people who falsely allege violence to avoid attending family relationship centres was withdrawn. You also say that the proposal to make cost orders against people who falsely allege violence should be pursued and extended to those who make false allegations of domestic violence for any reason. Can I, firstly, ask why you say that? I think it is important you put that on the record. Secondly, can I ask whether you would extend that to false allegations of sexual abuse? Thirdly, are you aware of any cases in the past where this has happened and do they ever get followed up as cases of perjury in court cases?

Mr Williams—Yes, we are aware of many cases where there were false allegations of child abuse and false allegations of violence. To answer the question: there is no law that will give a falsely accused person any sort of compensation or anything. The records are still kept and in many cases, even if a person is proven innocent, the court will keep those records on hand. They should be destroyed. That is why we are saying it is too easy for people to make mere allegations against another parent. False allegations should be considered perjury; that is what we are saying. If I go into a court—an ordinary court, not the Family Court—and I tell lies, then I am up for perjury. But in the Family Court it does not happen. They get away scot-free.

CHAIRMAN—You still should be up for perjury because people give evidence in the Family Court, on my understanding, on oath or by affirmation, don't they?

Mr TURNBULL—Perjury is very hard to prove.

Mr Carter—What brought this to our attention was some evidence that was given to Kay Hull's inquiry which looked at—I think the committee pursued this question quite vigorously

with various witnesses, including the A-G's Department and the Family Court as well—what actually happens in cases where people perjure themselves. It turned out that of the 50,000 divorces that happen every year, and whatever the number is of AVOs that are taken out every year, in only two cases was there a suggestion made by the court to the A-G's Department that they should be pursued for perjury. A-G's was then asked what happened in those two cases, and they said, 'Well, nothing.' That is zero.

Mr Williams—We are saying that it should be recommended. I believe that the only people who can force perjury laws are the police and I believe that there should be a recommendation—

Mr SECKER—Judges can, surely.

Mr Williams—Judges can, but then they have to have the police pursue it.

CHAIRMAN—We will put the question to the Family Court judges tomorrow: what is their approach when perjury is committed in front of them? We will see what they say.

Mr PRICE—On page 3 you talk about enforcement mechanisms and the ability to impose cost orders. The committee has already been advised that the Family Court has more than adequate powers to impose costs now. In your experience, are there many cases where costs are imposed?

Mr Williams—I have to be honest; I have never seen it happen yet.

Mr PRICE—If I could preface my next question by saying that the committee does suffer from the difficulty that we do not know what a relationship centre looks like yet—we have not seen one operating—and, as you say, the Parkinson task force recommendations are subject to a lengthy consultation by the government, so we do not know what exactly is going to happen in child support. Be that as it may, you are suggesting that you are not sure how pre-existing parenting orders are going to apply in relation to relationship centres. Is that not correct?

Mr Williams—What we are saying is that we are not sure whether they will be retrospective. We have been asked by many people in this situation, especially people who cannot see their kids and who have been to court dozens and dozens of times and spent up to $100,000 to be able to have their access enforced—and the courts admit they cannot enforce their own orders—for them to be retrospective, and for all those 65 relationship centres to be able to take their cases up.

Mr PRICE—Just assume for a moment that you have a new case: there are a parenting plan and parenting orders and then, five years down the track, the orders are not being applied. If they are able to go back to the relationship centre, how is that going to be a better situation than the current situation? In other words, if one of the parties does not cooperate at a relationship centre, the other party still has to have the $3,000 to $5,000 it might cost to take it back to the Family Court. I am trying to see how the situation will be improved, given that, I think in your words, unenforceable contact orders are a significant problem.

Mr Williams—Do you want to answer that?

Mr Carter—I do not really know what the answer is.

Mr Williams—I do not think any of us knows what the answer is, but we are saying that we hope that, with people going through the 65 relationship centres first, the people running them—and I believe they are going to be counsellors and a child psychologist—will be knowledgeable enough, after three attempts, to have some wisdom to be able to encourage these people to abide by the orders. Then we are saying that those who do not abide by the orders are going to have to go to the Family Court. And then we are saying that the Family Court must also play their part by enforcing those orders, which does not happen now. You can take out a contravention order, but that can go back five or six times and a judge will just give a warning; there is never any real penalty. That is what we are saying. We know the orders are there, we know the court have the power to do it, but they do not do it, for some reason.

Mr PRICE—Can I raise another matter with you. One of the principles of the report was that the court should take into account the wishes of the children and act in the best interests of the children. I want to raise with you the special representative of the child, where I think there has been little changed in the amending legislation. Without wanting to put words in your mouth, my understanding is that there is a lot of criticism of the special representative of the child, because they are not compelled to actually talk to the children and ascertain the children's wishes. Perhaps I could get you to respond to that—or do you think that the failure to change that section of the Family Law Act is not consistent with the report *Every picture tells a story*?

Mr Carter—Could I just make a comment about that. One piece of evidence that emerged in the course of the Kay Hull inquiry was a very interesting piece of information. I suppose it confirmed what we think and what we know. It was this: a number of surveys have been done at different times and in different places asking children what they actually want in a situation where there is a separation. Overwhelmingly, the children said they wanted contact with both their parents on an equal basis, and they also wanted equal time with their parents. That applied not only in families which had undergone a separation but also in families that were still intact. The children were asked the same question. It is a very compelling statistic and a very consistent one.

Mr PRICE—But, Jim, I am talking about the special representative that the court appoints, where they get psychiatric reports, do a report to the court but at no stage speak to the child. That is still possible under—

Mrs HULL—68L.

Mr PRICE—68L—thank you, Kay. You found that for us, which I am grateful for. Do you have a view about the special representative not talking to the child? Do you think that is okay, or do you think it should be changed?

Mr Carter—From first principles—and this is something which the Kay Hull committee did identify, and very rightly so—we need to talk to the children more.

Mr Williams—I believe that Diana Bryant, the new chief justice, has introduced what I think they call child orders or something like that. That is where the judge themself is actually speaking to the children. There is a trial period going on—I am not quite sure where it is going

on, but I have heard it has been very successful—where the children are actually speaking to the judge themself.

Mr PRICE—That is good, but I can tell you that in the act there is nothing that requires a court appointed special representative to actually talk to the child.

Mr Williams—Well, we believe they should be talking to the child.

Mrs HULL—I think that Mr Price's comment is extraordinarily valuable, and I had not recognised that either until he raised it here. One of the major outcomes from our report and our dealing with children was that they wanted their voices to be heard. I think we have identified something through Mr Price's diligence that has perhaps not had as much attention as it clearly should have had in these proposed changes, simply because it does not actually give a voice to the children in the way that they determined they should be heard.

Mr PRICE—I will leave the committee now, while I am ahead! I will retire!

Mr Williams—That is a very important question and it had slipped our minds. We believe that children should be heard. It has been a fallacy of the law that children are too young to know their own mind but, when it comes to being with their parents, I think children have the right to have a say. For too long, parents have been able to brainwash children into the decisions they want them to make.

Mr TURNBULL—New section 60B(1) sets out the objects of the children's part of the act which include:

(c) to ensure that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child.

The words 'to the maximum extent consistent with the best interests of the child' would seem to mean—and I am seeking your comment on this—that, if at least one of the parents wanted to spend equal time with the child and the other wanted to spend not less than equal time with the child, that objective could only be achieved by giving them equal time, unless it was felt that it was in the best interests of the child for one parent to have less than equal time. Would you agree with that?

Mr Carter—It would certainly appear so, on the face of it. But there is many a slip twixt cup and lip.

Mr TURNBULL—I agree with that; I am coming to the 'slip'. That seems to be the logical conclusion from that paragraph. Section 61DA talks about parental responsibility, as opposed to parenting time. It talks about joint parental responsibility—and, of course, joint responsibility prima facie means equal responsibility. Nonetheless, it is a weaker use of language than in section 60B. Then we get to section 65DAA. We talked about 'maximum extent possible' in section 60B and 'joint responsibility' in section 61DA, but in section 65DAA we talk about 'substantial time'—which is your criticism—which could, of course, mean five per cent. I might be putting words into your mouth here, but it is only to crystallise the point you are making to us. Is it your contention that the principles in sections 60B and 61DA of joint responsibility and

participation to the maximum extent possible—and if both parents want to participate to the maximum extent possible that can only be half of the time—seem to have evaporated by the time we get to section 65DAA, where there is reference only to 'substantial time'?

Mr Carter—Yes, that is very much what Barry has been saying. If we begin with a basis of equality up-front in the earlier sections, it should be present in the later sections as well. The form it would take, if we are talking about section 65DAA, is equal parenting time as a starting point for discussions between parents, not just in relationship centres but also in court. A great majority of people will probably never even get close to that because it is not practical, but it should at least be in their minds when they start to talk.

Mr TURNBULL—You are saying it should be a starting point.

Mr Carter—And it should also be an objective, because family arrangements can change over time.

CHAIRMAN—Thank you very much for appearing before the committee today. If you have any further thoughts on any matter, or if you have undertaken to give the committee any additional information, it would be greatly appreciated if you could get that to the secretary as soon as possible. You are, of course, welcome to sit through the rest of the proceedings today and tomorrow, should you so wish.

Mr Williams—I thank the committee again. I would like you to look at the Lone Fathers Association's 1990 submission. You will see that these centres are not a new thing: you have stolen our concept! We had the same thing designed and put to you in our submission, but we called them 'family relationship centres'. The Attorney-General said to me, 'You can take some credit for this, Barry Williams, because we did get some of it out of your 1990 submission.' I want to congratulate you, even though it took from 1990 to 2005 to come up with these 65 family relationship centres. I also want to thank Kay Hull's committee for their excellent job.

CHAIRMAN—Since we are in this mutual self-congratulation mode: for you to be involved in this area for 32 years, presumably long after any problems you personally had had passed through the system, indicates an extraordinary level of dedication. Thank you very much.

[2.11 pm]

HANNAN, Ms Jennifer Anne, Vice-President, Family Services Australia

LEES, Mrs Sarah Jayne, National Manager, Family Services Australia

O'HARE, Mr Tony, Treasurer, Family Services Australia

CHAIRMAN—Thank you very much for appearing before the committee. Do you have any comments to make on the capacity in which you appear?

Ms Hannan—I am also the general manager for services at Anglicare in Western Australia.

Mr O'Hare—I am also the CEO of Community Care Incorporated.

CHAIRMAN—Could you outline the connection between the two bodies before you give us an opening statement?

Mrs Lees—Family Services Australia is an industry representative body. Anglicare Western Australia and Community Care Incorporated are members of Family Services Australia. Both Jennie and Tony have a level of expertise in clinical service delivery that we thought would be useful in today's discussions.

CHAIRMAN—Anglicare is a national organisation. Presumably Anglicare WA is just the West Australian manifestation of it?

Ms Hannan—Anglicare is not a national organisation. There are separate Anglicare organisations in each state. There is a national office, but it is more like a federation. It is not centralised. Anglicare WA is quite a separate entity to Anglicare Sydney or Anglicare Queensland.

CHAIRMAN—Do you have as much trouble with your federation as we seem to at times have with ours?

Ms Hannan—Unfortunately, yes.

CHAIRMAN—Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. Would you like to make a brief opening statement of about 10 minutes?

Mrs Lees—I thought I would put our comments into some perspective. As I have mentioned, we are an industry representative body. We currently have 88 member organisations across Australia. To be a member of Family Services Australia you need to be an organisation that is

not a Relationships Australia, Centacare or Catholic welfare organisation. A lot of other providers of family relationship services are members of FSA.

CHAIRMAN—Could you give us a list of the members?

Mrs Lees—Yes, I will provide that after the hearing. Our members range in size from the Anglicare organisations to small community based service providers that might just provide a counselling service or family relationships education service. We have a very broad and diverse membership. Our organisations have an interface with the legal profession, so our comments are about the implementation of the legislation rather than the legislation itself. We are not legal professionals.

Ms Hannan—Being aware of the committee's time limitations and the short time that we have had to comment on the exposure draft, we would like to focus our response on three areas for the committee. The first area is the positioning of statements with regard to the best interests of children within the legislation, the second is the interface between the legislation and the practice in relation to family violence in the sector and the third is the immunity of dispute resolution practitioners—the facilitative versus the advisory practitioners.

Firstly, Family Services Australia supports the introduction of compulsory dispute resolution for separating parents and congratulates the Australian government for recognising this need. It also welcomes changes to allow the provision of information, with client consent, to other agencies and the court. That has led to enormous difficulties in regard to protection of children. We would also like to applaud the change of terms in the legislation from 'residential' and 'contact' to terms such as 'time spent', because that is actually the terminology that we use when we are working with clients.

Turning to the first point, the best interests of the child, the original intention of the Family Law Act in 1975 was to protect the best interests of the child and this has become known as the paramountcy principle. There is some concern, regarding this legislation, that the current exposure draft structure may be viewed as prioritising parental rights rather than children's rights. We believe the bill needs to give continuing expression to the best interests of the child being paramount at all times. We also believe that the court and legislation need to reflect the principle of the child's best interests, including the consideration of attachment issues for children when orders are being made. Qualified dispute resolution practitioners have the salient skills to enable parents to shift their focus from conflict to the best interests of their children. From a practice position, the most critical element in enabling conflicting parents to work together is getting them to focus on what operates in their children's best interests. We also wholeheartedly applaud the idea that the voices of children need to be heard in this process. With respect to the comment made earlier that there is nothing in this legislation to enshrine that, we would certainly see that as a gap that we would want closed.

In terms of recommendations, we would recommend that the language of the bill positions the best interests of the child as paramount. Although we know the legislation is not meant to overturn that, we note the way the parental rights sections are put in the legislation, with the children's rights sections underneath them. We actually think it should be the other way around. I will get Tony to speak to the other two points.

CHAIRMAN—Just before you do that, referring to section 60B—and given that you just said that you do not believe that the purpose of the draft is to overturn the presumption that the interests of the children are paramount—I do not quite see the significance of what you have just said. I do not see the problem that you have with the wording as it now is.

Ms Hannan—It is not so much the wording as the order of the paragraphs. We would prefer to see the paramountcy of the children paragraph first and the parental rights paragraph second—not because we do not think parents have rights; they certainly do, and they should be enshrined. But it has been my experience—as a practitioner working with families—that when you are able to use the legislation in a process with parents and say, 'This legislation is actually about the best interests of your children and that is why we are here today,' it is an exceptionally powerful tool. It is not taken out of the legislation but now that we are having the clauses concerning the rights and responsibilities of parents inserted, we need to have the children's rights as the first—

CHAIRMAN—I think 60B(1) refers to objects, as does (2), and there might have been some definitional reason for that. But we will consider what you say, certainly.

Ms ROXON—I think it might be 68F—

CHAIRMAN—Oh, 68F.

Ms ROXON—because it flows through in different parts.

Ms Hannan—Also in schedule 2, 70NEAB refers to the power of the court to make orders for compensation. The clause refers to compensating parents for lost time and is placed before the clause that refers to the best interests of the child, which is clause 2. So that is just one of the examples.

Mr O'Hare—I will move on to the next issue which I think is linked strongly to that principle of primacy of the interests of the child, and it relates to family violence. Let me say on behalf of all of us that we need to congratulate the committee on the strong focus on family violence and abuse that is in the exposure draft. It is unmissable that that is a key issue of concern for the court to consider in terms of any placements. The issue for us in regard to that would be that family violence is more broad than merely physical or sexual abuse, and may include such things as long-term harassment, bullying, intimidation, or the entrenched conflict itself in which the parents and the family are engaged, or may be engaged, in that process. In that regard, it seems important to us that qualified practitioners who are engaged in this sector—be they in family relationship centres, as it appears many of them shall be or in other avenues—have the skills and the experience to be able to identify and understand that violence is a broader issue.

In reading through the exposure draft, it seemed to us that there needs to be at least some reference to that and perhaps taking that up in the regulations in regard to best practice guidelines and competency standards for those who will be involved in that critical position, particularly where those practitioners are going to be key in terms of identifying the particular violence and abuse that may be presented to the court. Following on from that, we would tend to argue that those practitioners will also play a significant role in assisting the court to identify those cases and may in fact be able to identify priority cases that need to come before the court quickly. Waiting periods could be reduced in circumstances where the health and wellbeing of

children may be endangered. For that reason we would argue again that those practitioners need significant and documented skills that are set out either in the bill itself or in the regulations. As a result, not only do those guidelines need to be in place but we would argue that a system needs to be developed in terms of protocols to identify those priority cases and that those practitioners should have the ability to feed that information to the court in a timely manner.

The third of our points relates to, again, the practitioners—or the family dispute resolution practitioners, as they are to be called. Schedule 4, clause 10M of the exposure draft, page 53, refers to the immunity of family dispute resolution practitioners. It states in that clause that the FDR practitioners do not have protection and immunity when conducting advisory dispute resolution and that there will be a distinction between facilitative and advisory resolution. As practitioners within the field, we see that as somewhat problematic in that there are often blurred distinctions in terms of the provision of what was known as mediation, now 'family dispute resolution'. In practice, that becomes somewhat difficult in that people quite often move in terms of servicing the best needs of the client and the case that is presented between advisory and facilitative resolution. For that reason, it may be easier to give immunity to both facilitative and advisory roles to cater for the fact that the distinction may become somewhat difficult to maintain.

Mr TURNBULL—Can you identify any negatives or downsides associated with giving immunity in the advisory area as well as in the facilitative area?

Mr O'Hare—We gave some facilitation to that this morning. We asked ourselves that question and we were not able to come up with a downside in our discussions, but we are intending to take the matter back to other members who may have a different view about that. This matter has only come up since Friday as an issue for us in reading the draft. So we would probably take that as a question on notice and provide you with some further information about that. I think that is one that others may speak to.

CHAIRMAN—You can come back to us on that.

Mr SECKER—During the hearing this morning I have written down what I might call 10 possible policy goals or areas of contention—I would not call them Ten Commandments—and from what you have said already I have ticked off some of them. What is your view on court orders being enforced?

Ms Hannan—If there is a breach of a court order those cases should automatically go to a contact orders program. Breaches of court orders are relationship issues between the parents. They are not legal issues, although they become legal issues. The contact orders programs are set up to work with the parents around working through those issues and are very successful at doing that. There is always going to be a percentage of cases where they are not successful, but that is actually quite a small percentage of cases. We run a contact orders program in Western Australia. Our success rate is between 85 and 90 per cent, and that is with very hard-end people as well as non hard-end people, so to speak.

Mr SECKER—What is your view on equal parenting as a starting point for policy and outcomes?

Ms Hannan—My thought on that—and I will get Tony to comment on this as well—is that the starting point needs to be what is in the child's best interest, and then we can look at the resources and the attachment issues for the child in relation to the parents' pre-separation parenting regimes—that is not to say that that cannot change after separation—resourcing and where the child fits in that. There certainly are cases—and I should put on record that we run two contact services—where I have experienced parents of either gender making it quite difficult for contact to happen with the other parents—not turning up and all sorts of things—over and over again. But the way to resolve it is not to send in a policeman and have a 10-year-old child taken away kicking and screaming from the residential parent to the other parent's residence, which happened in Western Australia not less than a week ago. That is completely inappropriate. There are other ways of doing that through contact services and other mechanisms. In that process you are actually punishing the child.

CHAIRMAN—I think Mr Secker is asking: should we start from a position of equal parenting time, which could be varied by the individual circumstances of the case if that equal parenting time were not suitable in those circumstances?

Mr O'Hare—I think that was our point in arguing that you start from the position of the best interests of the child. All other things being equal, it may well be that that is a good position to start from. We come back to emphasising that simply so that the court is focusing on that starting point rather than on the shared parenting as the issue. For the child's best interest, all other things being equal, it may be that that is a reasonable assumption to make; and from that others flow.

Mr SECKER—What is your view on perjury cases? Should they be followed up? I have not heard of any that have been.

Mr O'Hare—I think they should be, yes.

Mr SECKER—Should costs be awarded for a false allegation, where it is proved?

Ms Hannan—I think it is often quite difficult. One person's perception of an event is often quite different to another person's perception of that event. It would probably be quite difficult for a court to tease that out.

Mr O'Hare—And it also depends, again, on the impact that that has on the child. I know that it is certainly referred to in allocation of costs—that that needs to be considered—and other action may be taken. But provided that is taken into account—

Mr SECKER—But at the moment there is no redress or penalty for that sort of thing, is there?

Mr O'Hare—And I think there needs to be in some capacity, yes.

Mr SECKER—Should family relationship centres be an extension of existing services and therefore expanded? Or would you like a whole new government set-up?

Mr O'Hare—The family relationship centres, as I said, are in one sense triage centres, clearing houses or gateways to the broader service system. They need to be heavily connected

and the services provided in those centres need to be provided by people who know and understand the work that is involved. They should not simply be administrative centres; they require some high-level intake and assessment services to enable that triage to happen appropriately. That is what I was talking about earlier, particularly in relation to the recognition of family violence. This is not an administrative task; it is an important triage centre. So whilst they are an extension of the services that exist, they are also different and unique in and of themselves.

Mr SECKER—Particularly in rural areas, where it is often a bit harder to supply services, what would you feel about the idea of these family relationship centres also being secure handover areas?

Ms Hannan—There would need to be a whole suite of services in rural and remote areas around family relationship centres for them to work because they cannot provide any long-term work with families. So if you are going to plonk a family relationship centre in Broome, for example, there are not any services that are going to be able to support a relationship centre. You have to put the services in as well, wherever you put them.

Mr O'Hare—You need some Chinese walls in that process if you are going to have those handover services in the same centre.

Mr SECKER—My last question is probably the most vexed one for all of us. How do we define violence? We have had a lot of evidence put to us that it can be frivolous—

Mr O'Hare—Or very serious.

Mr SECKER—Yes, very serious at the extreme. So do you think that we should toughen up that definition or is it strong enough? 'Violence' as a definition on its own is very wide, but if you say 'serious violence' that gives some consideration to it being meaningful.

Mr O'Hare—I think the definition needs to be clearer rather than necessarily narrowed. There needs to be some bounds to it. Otherwise, you are right: as previous speakers have said, violence can be tagged against anything. We need to ensure that we do not go to the narrowest definition that defines it as physical and sexual abuse. In leaving it too broad, we probably run the risk of it being open slather. There probably needs to be some explanatory notes that detail what we are talking about, that talks about things like intimidation and entrenched conflict that affects the children—harassment, bullying and those kinds of issues. But I do not think that they should be left out of the definition either, simply because—

Mr PRICE—Mr O'Hare, why can't we put it upon the state courts to make the assessment, when they are giving their domestic violence order—I am not sure what they call them in Western Australia—as to whether or not the case is appropriate for mediation or should bypass counselling and mediation?

Ms Hannan—Any mediation service will automatically do a thorough assessment even if a referral came from a court.

Mr PRICE—No, you are missing the point. Courts churn out these—what are they called in Western Australia?

Ms Hannan—Violence restraining orders.

Mr PRICE—In my state they churn them out like sausages. I can understand why they do that, but I am suggesting that we try and impose a responsibility on the court that when they issue one of these orders, they also make a determination about whether or not they feel the parties are still amenable to counselling and mediation or should bypass that. Do you have difficulty with that sort of an approach?

Mr O'Hare—No, I think that is a reasonable point of view, provided that there is consistency across the states, which is the issue. Not being a lawyer, I do not know how that would be achieved. In principle, I do not see that as a problem, provided that there is consistency across the states in that practice.

Mr TURNBULL—I will raise a point about family violence. The definition of family violence in section 60D is not amended by this legislation, so it is part of the old act. It defines violence as:

...conduct, whether actual or threatened, by a person towards, or towards the property of, a member of the person's family that causes that or any other member of the person's family to fear for, or to be apprehensive about—

and these are the key words—

his or her personal well being or safety.

How would you react if that were amended to read 'his or her physical wellbeing or personal safety'? It is on page 149, section 60D. This is the definition of family violence in part VII, subdivision C.

Mr O'Hare—I will probably take that in part on notice because I do not have the document before me to look at, but my initial reaction to that would be that in one sense it does not seem to me to pick up the psychological harm that may be caused in those circumstances and that would probably need to be included in some way in that amendment.

Mr TURNBULL—I am just trying to tease out the debate here; I am not expressing a personal opinion. The view was expressed earlier, as Mr Secker said, that we should be talking about serious family violence and that begs the question of what is serious. We discussed linking it to physical harm, which is what those changes I suppose would do. If, however, mental or psychological wellbeing is included in it, aren't you just back to it being entrenched conflict, which means in effect that one party can say, 'Being in the presence of this person is too upsetting; therefore we can't go to the mediation'?

Mr O'Hare—I think the entrenched conflict would relate to how that affected the child rather than necessarily the partners in that case.

Mr TURNBULL—The relevance of that in this context is we are talking about whether people can go straight to the court without going to the family dispute resolution process.

Mr O'Hare—As I said, if we are using the family relationship centres as some sort of first point of contact into the system that it is at that point I think that you would need skilled professionals who would have the ability to identify the distinction between what was serious violence and what was not. I agree with you that that is a difficult term to define but I do not think that as a professional I would support the view that only physical violence is serious violence. For that point alone I think we need to emphasise the skills at the point of entry into the system that do allow a reference immediately to the court in circumstances where that is identified. If we narrow the definition too far that does not allow for that to occur and those professionals will not have the opportunity to get that into the court system fairly quickly.

Mr PRICE—Are people with an AVO going to be able to go to a family relationship centre?

Ms Hannan—They should be able to. We can sometimes in Western Australia get exemptions to VROs for mediation. Where we cannot do that we can do shuttle mediation, so they are not actually in the same room if we still feel that it is safe and that the parties are able to do that. It does not preclude necessarily mediation happening.

Mrs HULL—That is a very good lead-in. My concern is to establish the best possible family relationship centres and what the base guidelines would be. The concern I have is that we do not just have family relationship centres as divorce centres but have early intervention centres that have the ability to deal with all sorts of issues associated with family life, and so-called successful family life. Could you perhaps—I do not expect the answer now because I know the chairman will want to move on to other members—take on notice how you would suggest that we deliver the best outcomes. What guidelines do you think should be proposed for the establishment of family relationship centres, bearing in mind those issues that were just raised—that is, there is no reason why people who are subject to AVOs or have had some form of violence within their relationship should not be able to go to family relationship centres to try and resolve this issue? How should we best put together the fundamental guidelines for successful family relationship centre objectives?

Secondly, I would like to have a bit of an understanding of how you think we should interface between Commonwealth departments, state departments and state authorities with respect to utilising all available options for determining the real status of a family. Do you have any ideas on how that might be achieved? Again, the idea of the changes to family law was to establish a sense of fairness and equity across the board, for all people. The amendments to the Family Law Act will go some way—and obviously there may be additional changes—to putting that in place for those people who go to the Family Court.

We really want to be able to provide some sense of fairness and equity for those people who are able to resolve these issues for themselves and who are currently caught up under the overarching family law practice threat, so to speak. How do we bring about the best outcomes for all people, not just the people who are the five or six per cent who are going into this big booklet? I would be very pleased if you had some thoughts on that and how best it can be established in the family relationship centres. What should a family relationship centre that would deliver those outcomes look like?

Mr O'Hare—We will take that as a question on notice and provide an answer.

Ms ROXON—I have one question about section 10N, which is about the approval of family dispute resolution organisations. I would like to preface my question by asking whether you could give us some more information in your answer to the question you have taken on notice from Mrs Hull. I would have thought that that was exactly the type of thing on which the government would have been consulting quite extensively with you when introducing the family relationship centres. If the government is not, we would like to learn about that from the submission as well. This committee is looking at the bill. The implementation questions are enormous and I would be very concerned if organisations like your three organisations were not front and centre in the consultations that the government was having about how to implement the family relationship centres.

Section 10N of the proposed bill goes to an organisation that can be approved as a family dispute resolution organisation, and I am a little bit confused. In answering my question you might be able to tell me about the current status because this definition now seems to say, 'You will be approved if you are receiving money, and you can receive money if you are approved.' None of that gives me any confidence that there is any proper accreditation process or anything that means a new person tendering to be a family dispute resolution centre would have to have the skills that your organisations have. In answering it would you, for the benefit of the committee, tell us what exists currently for the protection of the standards, whether this would change it and whether you have any concerns with this provision?

Mr O'Hare—Currently the standards exist at a program level rather than in the legislative base, as I understand it, and they are applied to those organisations which receive funding. There is a requirement of that funding that they meet those standards, so it is dealt with in the contract specifications rather than in any legislation. It does have some inconsistency in its application in that there are numbers of organisations that have not met those requirements but whose funding is not removed, who continue to receive funding or receive new funding. We have expressed concern for some time that that is problematic and makes the system of standards meaningless in some ways.

Ms ROXON—Does this provision potentially make that worse? By the sound of it, it is really a statement of where it is at.

Mr O'Hare—I think it is stating where it is at.

Ms Hannan—One of the concerns we have is that currently it is only FRSP organisations that can provide community based mediation services under the act and that there are, I understand, some plans afoot to accredit individual private practitioners, which is of concern unless we have got really good standards and training in place. Often the cases that we are dealing with are very high conflict and often quite dangerous. I certainly would not want to be a private practitioner doing some of this work.

Mr PRICE—Catholic Welfare Australia this morning, if I understood them correctly, were concerned that there had been, in fact, very little consultation. Would you concur with that?

Ms Hannan—Yes, we would concur with that.

Ms ROXON—I understand that you would be, from those answers, broadly supportive of more attention being given to what type of accreditation or threshold should be got over. Rather than funding being the way we determine whether an organisation should be authorised, if we are talking about the best interests of the children, presumably who runs these services and how they are run is pretty important.

Ms Hannan—Also, who will monitor that and who will assist in getting services up to speed. If they are not up to speed, if they fall below par, for whatever reason, in a period, whose responsibility is it to—

Ms ROXON—What you are saying is that that is already an issue, which could be exacerbated by new centres coming up; it is already a problem that we should deal with.

Ms Hannan—Absolutely.

Mr O'Hare—In that section there is also a discussion—and we are seeking an opinion on this, which is why we have not raised it as an issue at this point—about the definition of an organisation. This is trying to deal with the issue whereby, under the current arrangements under the act, you must be wholly or substantially engaged in either counselling or mediation to be an approved provider. This is now changing it to a position that says, 'You may be a branch of an organisation and have separate accounts.' To us, that seems somewhat confusing. It is a section we are taking some legal advice about in that there may be some organisations who do not necessarily meet that standard or who would be required to restructure their organisations to meet it.

I applaud the intent, which is to move away from a section that is, in effect, seen more in the observance than the breach. Anglicare, for example, provides far more services than substantially or wholly family based services, yet it is an approved provider. The move is a good one; we are just not sure it is the right wording. We have not got advice to this point, and that is why we have not raised it. But, again, we will take that on notice.

Ms Hannan—The other issue I want to raise is about the accreditation situation. Until now it has actually been compulsory for funded organisations to belong to an industry representative body. Under the new contracts they no longer have to be a member of Family Services Australia or another industry representative body, which makes it even more difficult in terms of quality assurance issues.

CHAIRMAN—Freedom of association.

Ms ROXON—Yes, apart from the government's freedom of association provisions, presumably the actual impact of that is: if you are not a member of the organisation, you are not bound by your practice standards that might be there to protect people.

Ms Hannan—That is correct.

Mrs Lees—There are questions at the moment around the existing approval requirements. Services that are already funded through the Family Relationships Services Program go through an approval requirement process. Our understanding is that that is going to cease, as it is, shortly,

and the Department of Family and Community Services are reviewing the next step forward about how they are going to progress quality and standards. There is quite a level of uncertainty at the moment within the service sector on how quality assurance is going to be monitored in the future.

Mr PRICE—You have confused me with an earlier answer about people's ability to attend this compulsory mediation or dispute resolution. If you look at 60I(8)(b)(iii) and (iv), admittedly that refers to 'phase 3 from 1 July 2008'. It also states you are precluded from attending if:

… there has been family violence by one of the parties to the proceedings …

I would have thought that means that if there is an AVO issue, you are precluded from going to one of these new centres.

Mr O'Hare—I think that when Jenny answered that she was talking about current circumstances and was not referring to the changes that may be imposed here.

Mr PRICE—I am talking about the changes.

Ms Hannan—In fact, that would be quite restrictive because currently we see people every day who are in very high conflict and we make calls about whether they need to be seen in separate rooms in separate parts of the building or whatever, but we will still do a mediation by shuttle if necessary. There are some cases where we would not do it, and I need to be clear about that as well.

Mr PRICE—Is it still the case in the WA Family Court that court mediation services or counsellors are actually provided by the state department, or has that changed?

Ms Hannan—They are employed by the Department of Justice, yes.

Mr PRICE—Would there be anything, given that the WA court is set up under the WA constitution, to prevent these new centres being run by the state?

Ms Hannan—I cannot talk about that from a legislative point of view. From a practice point of view, I think that would not be a wise move. The minute you have anything associated with a court service, you immediately have people in a frame of mind.

Mr PRICE—Sure; I did not mean the court. Getting back to these new centres—if we only knew we would not be asking questions, I guess—isn't it likely that a variety of people are going to be successful in these tenders, and so you are going to have some organisations operating in one state, and maybe even in a couple of states, and others being successful?

Mr O'Hare—I think it is a fallacy to assume that it needs to be. That, of course, will be a decision that those who are evaluating tenders will make based on that. My hope is that in the evaluation and tender process they would take into account very strongly the existing expertise of those agencies. If they do not have that expertise, there would be concern from those of us who are end providers, who may also be FRC providers, as to—

Mr PRICE—I guess my concern is somewhat different—that is, how do you get uniformity so that you get the same outcome from a Queensland centre in Cairns or Townsville as you would from one in Western Sydney, where I live, or one in Williamstown, Melbourne.

Mr O'Hare—I think part of that will be determined by the specifications that we are going to see—and, hopefully, we will be a part of developing them. I think there needs to be some collaborative effort by those who are successful tenderers in terms of developing that as a sector. We have seen that happen in other areas, where a certain degree of consistency of practice develops out of new and emerging services such as the contact orders programs, which were originally three completely separate pilots but whose processes have been brought closer together by those agencies saying: 'Hey, we're new. We need to develop those out.' Because there is an existing relationship amongst those players in the field, there is a commitment amongst those players to develop consistent protocols and a consistent look and feel. That is not to say that there will not be local idiosyncrasies. If we do develop—in, say, Queensland, where I am from—services in rural areas, they will be different to those developed in a metro area, by the simple virtue of different geography. I think that those things will be part of the development process. That is why we need to be very careful in the number we roll out initially and to use those as models that can develop consistently for when we roll the full 65 out at a later time.

Ms Hannan—But there do need to be quality practice standards that apply across—

Mr PRICE—You mentioned that you ran three contact centres.

Ms Hannan—We run two.

Mr PRICE—We were told in Victoria by a lady appearing as a witness that their contact centre records were often subpoenaed by the Family Court.

Mr O'Hare—Yes, that is correct.

Mr PRICE—It seems a bit bizarre to me that that happens when you are running a recognised service.

Ms Hannan—That is the one FRSP service that was not covered by section 19N of the Family Law Act when they were set up. The idea was to be able to provide information to the court around children's issues, and I would be very supportive of that continuing. It is actually critical.

Mr PRICE—But is that the best method—by subpoenaing records?

Ms Hannan—Generally it does not happen by subpoenaing records. Generally what happens—and certainly I can talk about Western Australia—is that a child court expert or a lawyer requests a report and a report is written based on the contact notes that are taken at the time of the actual contacts. So the file might be subpoenaed but it is usually a report that goes, not the file.

Mr PRICE—I see. But that clearly does not operate in other states.

Mr O'Hare—It does for us in Queensland. We similarly offer full contact services in Queensland. You have picked the two agencies who operate on the principle of providing reports to the court.

Ms Hannan—That is right.

Mr O'Hare—I need to say for the record that there are many other services—it is probably split fifty-fifty—who do not agree with that principle and think that there should be some level of separation. That tends to come from a difference in the basic design of them and where they started from. Some, such as our services, are fairly integrated and offer a range of other services that are available to clients separate from the contact service so that we can cross-refer them to counselling that is covered by 19N and provide that separately. Others that are stand-alone tend to argue: 'No, we're not going to provide that.' Part of that is a logistical issue in terms of the costs associated with developing those reports and recovering those costs, particularly from self-represented litigants.

Ms Hannan—Also, we take a philosophical position that if we have information that can assist a good judgment to be made on contact with a parent then we will provide it.

Mr PRICE—That is fair enough. In WA and Queensland, where you operate these centres, are there also centres operating that are not Commonwealth funded?

Ms Hannan—Yes.

Mr PRICE—Would you comment on how well or poorly they are operating?

Mr O'Hare—We have actually had to approach many of those providers. We operate nine centres, of which two are funded by the Commonwealth.

CHAIRMAN—In what area?

Mr O'Hare—They are mostly in South-East Queensland, from the Tweed area up to the Sunshine Coast and out to Ipswich. A large degree of them are in the greater Brisbane area. We have one funded service on the Gold Coast and one in Logan. There is not one that is specifically funded for Brisbane, so we satellite out to Brisbane at this point in time, because obviously there is a massive need in that area. We have self-funded two services in that area, mainly through state based funds.

The child protection service funds quite a deal of supervised contact. We have used that to leverage the agencies that have been set up by independent providers or individuals—sometimes legal firms—that do not have the same standard of practice that is required and that is absolutely necessary in centres such as that. I guess that is where some of our fear comes about providers who are not within that system providing family relationship centres. We have seen it go badly with contact services. There are some very dangerous practices occurring. We have literally gone to the management committees of those organisations and have said, 'Look, we will assist you in delivering and operationalising these services because we consider this to be a considerable risk both to your staff and to the clients.' But the standard of non-funded services is generally poor.

Mr PRICE—To be frank, I am a little shocked that they are not accredited. It did not occur to me that they would not be accredited organisations operating professionally.

Ms Hannan—In Western Australia there are only two contact services in the whole of metropolitan Perth. There is another large private organisation that provides contact. Again, it is the same issue. We have approached them to provide training. Basically, the standards are just not the same. Supervised contact has occurred where the dad, the man who is supposed to be being supervised, is sitting in the back of the vehicle while the supervisor is driving the vehicle. You cannot see what is going on in the back seat of a car. That is the sort of stuff that happens in services when you do not have professional standards.

Mr O'Hare—We likewise have argued for many years that all services should be accredited in some capacity, because it is a *60 Minutes* story waiting to happen.

Ms Hannan—It is.

Mrs HULL—Do you get referrals from the Family Court back to your mediation services regarding people who are or have been under apprehended violence orders?

Mr O'Hare—Yes.

Mrs HULL—So in fact you are currently doing work with apprehended violence orders through referrals from the court?

Mr O'Hare—Absolutely.

Ms Hannan—Yes.

Mrs HULL—That is handy, because I was wondering where Mr Price was coming from. That is in fact exactly what you are currently doing. I would also like to ask about mental health. I come back to family relationship centres, but there is such a direct correlation between the Family Law Act and the changes to it and the family relationship centres that it seems to me that we need to be very clear as to how the family relationship centres are going to work and be structured in order to get the best outcomes from the Family Law Act. In your experience, is there enough emphasis on mental health issues? Are there more people presenting with mental health issues in family relationship breakdowns, and what would be the best or most appropriate way of dealing with those people who have mental health issues?

Mr O'Hare—I do not think it would be fair to say that most people who come through have mental health issues. However, I can say that some of the most difficult cases to manage that we experience tend to include people who have mental health issues, particularly—just speaking from my experience—people with borderline personality disorder and personality related disorders rather than, say, intellectual incapacity. In terms of how best to deal with that, that needs a case-by-case analysis and again requires professionals who are skilled in this area to work within those family relationship centres, to be able to triage people and to understand those issues as they come through the door. If we move to a model of family relationship centres that is purely an administrative, Job Network or Centrelink kind of model that is purely or largely

administrative and does not have the professional, social and psychological skill and experience to understand the issues that come through, we will create for ourselves a rod for our own backs.

Mrs HULL—That is about the family relationship centres, and now we will talk about the Family Law Act and the courts. Do you think that they are adequately equipped to deal with those people presenting with mental health problems?

Ms Hannan—The family relationship centres—as does the FRSP at the moment—see people who have mental health issues right through the continuum. When you get down to the end of the continuum where you are looking at a psychiatric diagnosis of some sort of psychosis then the practitioners would only be working with those clients in consultation with a mental health professional. A lot of people around separation have depression or anxiety. They are fairly normal presentations. Tony is right, in that when you have somebody presenting you need somebody who can actually make an assessment as to whether this is likely to be a serious mental health issue, a potential suicide or whatever, put protocols in place and make sure that person is being assessed appropriately. It will not happen in a family relationship centre; it will happen somewhere else. But that does not mean the family relationship centre will cease to work with that person.

Mr O'Hare—As to whether the court has the capacity to handle that—it is certainly referred to and there is a move in that direction—this is where the practitioners in the family relationship centres need to work extremely closely with the court on these issues. Those of us who are engaged in, say, contact orders and contact based programs have done that as a matter of necessity. We started out from a position in 1996 where we said, 'We've got to supervise these people,' and it was more about safety and security. Very soon we realised that in order to move people to somewhere else, which has to be the ultimate aim of these processes, we needed to work more intensely with the courts. To do that, we needed the support and assistance of the court in understanding the motion through.

In fact, quite ad hoc, the court now regularly rings both of us for the purpose of asking: 'What do I put into this order and what do we need? Can you come and have a look at this person and do an assessment in that regard?' because there is a level of confidence in doing that. Somehow we need to move that closer together in the implementation phase to ensure that the court and the professionals are working heavily together, because I do not think there is enough in the court to do that.

Mrs HULL—Thank you.

Mr KERR—I want to follow up some of the points raised by Mr Price about an obligation to seek the views of a child. I think, in principle, one would expect a family child specialist to do that. I suppose, in my mind, I also see a downside—that is, where contact is highly institutionalised and there is a temptation by one or other of the parents to put pressure on children to try and shape how they would express themselves. That might be a very destructive thing. There may be many instances where the wisest course is that such questions should not be pursued.

Mr O'Hare—Absolutely.

Mr KERR—A mandatory obligation inserted seems to me to be something I would hesitate to require.

Ms Hannan—I do not think it should be mandatory. I think there should be an ability to access children's voices if it is safe. There are certainly cases where it would not be safe, and practitioners would not actually interview children for the very reasons that you have outlined: that the children would be at risk.

Mr KERR—It is not only safety; it is also reliability, is it not? You may have a circumstance where the interim order has been made, the child is with one of the parents more often than the other and that parent uses their intimacy with that child in that period of time to coach the child. I know that it is said that very wise professionals can see through some of these things, but it would take an awful lot of faith on my part to believe that will always be the case.

Ms Hannan—Children are never seen in isolation from their parents. Before we would ever see a child, we would be speaking with both parents and we would get a general feel about what the situation is before a child was ever interviewed. I guess you trust your GP when he tells you that you need to go to bed and take a Panadol; maybe you should trust what the professionals say. It takes a lot of experience in working with children to actually be able to know when a child is feeling pressured. You can actually tell when children are being coached. They use words that are adult words; they do not use their own language. You can tell when children are anxious and nervous. It should be done over time and it should not just be done in a one-off session, because often there are anxieties associated with not knowing the environment, the person et cetera. It must be done in a proper environment. We have a number of cases where, quite clearly, the parent has certainly not been assisting or facilitating a contact with another parent. We are very well aware in those cases, and we will put in place relationship building with that child to enable the child to have a safe space where they can talk to someone neutral and then have the father introduced. It certainly happens, but we are actually aware when it does happen. Contact services particularly see that and contact orders programs see that day in, day out.

Mr TURNBULL—Children can be very willing participants in this. They can be as manipulative as their parents.

Ms Hannan—Sure; absolutely. We can often see through their parents too. I do not think you can actually say children are any less reliable. They will certainly try and please an adult—there are no two ways about that. When you interview, you can get the answers to questions that they think you want them to give. But there are different ways of asking questions that will test the validity of the responses that you are actually getting. I think it is a misnomer for people to think that children at the age of seven, eight, nine, 10 and 11 cannot articulate their needs. I have met some exceptionally articulate 10-year-olds.

Mr PRICE—A slight rebuttal: when the Family Court appoints a special representative of the child and specialist reports are commissioned, my point is that the special representative of the child should at least interview the child.

Ms Hannan—I would agree with you 100 per cent. Nobody should—

Mr PRICE—Leave it at that!

Ms Hannan—Nobody should be doing that work if they do not want to talk to children.

Ms ROXON—I have one quick question; I know we are tight for time. There is a new provision in the bill which says if you are not going to attend family dispute resolution, there are various exemptions, and one of them is a certificate stating that the services are not accessible to you. Could you give us some idea of what the time frames are? Is a service not accessible to you if you have a six-month waiting list or you have to wait for a month? How does it work? You are the last service providers that we are hearing from, so I was determined to make sure that we asked this question of you. What do you think is an adequate thing to say when a service is not accessible to a person? Is it time, is it distance?

Mr O'Hare—We both come from contact services. One father, for example, flies from Adelaide once a month to visit, so obviously he has the funds to do that. It is also a question of capacity to do that, so it is a difficult question to answer. When you consider that there are going to be only 65 family relationship centres Australia wide, there is a concern regarding not only the geographical spread but the sheer volume of numbers that will flow through. A good example may be the COP projects which mostly have around a nine-month waiting list.

Ms Hannan—Not in Sydney. It depends on the model, but they do have long waiting lists in order to get into the services. Often, it is up to 12 weeks. You might get an assessment session, then you have to wait 12 weeks for the next group program because they are all full. Currently, there are huge waiting lists, particularly for the Children's Contact Services and the Contact Orders Program. It is always better to strike while the iron is hot. Usually, if you can get people in quicker, the better the outcome.

Mr O'Hare—You get less resistance. With the contact services, in particular, that was why we decided to self-fund a whole stack of them because, simply speaking, it was not in the best interests of our clients and, as a community organisation, we took the view that our surplus funds needed to be directed towards meeting those needs. There was a lack of services and, in some cases, waiting lists of eight or nine months. As professionals we were seeing attachment issues breaking down, through no fault of the parents, other than a long waiting list—they were not getting to see their kids—it was problematic for the kids and we needed to take that into our own hands. I guess the jury is out in terms of the sufficiency of the services that are going to be there. I am not sure where they will be sited and, until we see some of those, it will be difficult. But perhaps in our question on notice regarding those family relationship centres, we can give you more of an answer around that and do a bit of analysis as to the sufficiency, as we see it, to meet those needs.

Mr PRICE—You describe the family relationship centres as a sort of triage service, but I understood that there would be compulsory counselling provided out of the centre. Are you aware how much free counselling will be available?

Mr O'Hare—Three hours, as I understand it.

Ms Hannan—That is after the assessment, so there will be an assessment session, which could take two hours, and then up to three hours mediation or counselling.

Mr PRICE—What happens if they really need six hours and do not have the money? Would you be able to see clients who have current parenting orders about which there may be some dissatisfaction and is there free time associated with them?

Mr O'Hare—The three hours will largely involve orientation. I think it is unrealistic to think that, for those people—other than those who are already in a position where they just need a little bit of movement to move on to something else—who are going to be involved in some greater conflict, three hours will do much at all. It is at that point that we need to ensure that the services at the back-end—what we currently know as the FRSP services—are sufficient to take that volume that will flow through.

Mr PRICE—What is FRSP?

Mr O'Hare—Family Relationships Services Program.

Ms Hannan—They currently provide the counselling and mediation and Contact Orders Program services through the Attorney General's and FaCS. The idea is that the family relationship centres would, in those first three to five hours, either do the work that was required to get some sort of an agreement and send people on their way or if it was going to take longer than that refer into the existing Family Relationships Services Program.

In terms of the fees issue, the Family Relationships Services Program is supposed to have fees associated with it but it also has the ability to waive those fees in cases of need. So that should not really be a huge issue. If you think you are going to need another one session in a family relationship centre, you will not refer because there will be other people who only need two sessions. So it will be a bit of a juggling act.

Mr PRICE—Let us say we have just opened a new relationship centre. It will not be in my electorate; it will be in Jackie Kelly's or someone else's. So that I understand: it can take a diet of new cases as well as taking a diet of old parenting orders from day one.

Ms Hannan—I would think so. That is my understanding from talking to Attorney-General's.

Mr KERR—Do you pay for this?

Ms Hannan—For the family relationship centres, no. The first five hours—

Mr KERR—No, the next stage.

Ms Hannan—For the next stage there is a sliding scale of fees but with the ability to waive fees in cases of need.

Mr KERR—How do you get out of the loop? Let us assume that you have gone into the five-hour program and you have been assessed as requiring additional assistance with counselling. At some point along the way you say, 'I'm fed up with being a care bear. I'm sick of the touchy feely stuff. I want to have some rights determined.' How do you lift yourself out of this and say, 'I want to activate the court processes.' How is that supposed to be triggered?

Ms Hannan—My understanding is that you have to be able to show a certificate that you have been to a family relationship centre. Once you can produce that certificate—

Mr KERR—So it is three hours, is it?

Mr O'Hare—Once you have done your three hours, my understanding is that you can then take it—

Mrs HULL—That involves a whole host of things.

Ms Hannan—It does.

Mrs HULL—There is the parenting plan prepared through the discussion. So you go through a process and you cannot file until you go through that process.

Mr KERR—I understand that. I am not trying to be—

Mr PRICE—I am confused. If you have not completed it in the three hours, you do not have a parenting plan and you refuse to go to further mediation, what happens then?

Ms Hannan—You will not get a certificate, the court will not like you very much and you will be ordered to go.

Mr PRICE—How long will it take you to get into that? You were telling me the other services have nine months delay.

Ms Hannan—In terms of contact orders programs, in Western Australia it is 12 weeks. In Sydney it is something like six to nine months.

Mrs HULL—Is that for supervised contact?

Ms Hannan—No, this is the Contact Orders Program.

Mrs Lees—Supervised contact has similar waiting lists.

Ms Hannan—Or we will only offer an hour instead of three hours or something, because we do not have the capacity.

Mr PRICE—In relation to Mr Kerr's question, how long will it take a couple in regard to whom the five hours does not satisfy? What is the waiting time you would anticipate before they can have the matters resolved in, let us say, a difficult case?

Ms Hannan—In a difficult case you are currently looking at a wait of between six and 12 weeks minimum. If you happen to be in a rural or remote area, there are not any services.

Mr PRICE—How do those people cope?

Ms Hannan—Very, very badly. They travel or they do not access services, currently.

Mr KERR—What if one parent has the child with them, is resisting providing the child to the other and just says, 'Get stuffed. I'll go through this. I'll substitute time for money. I'll just keep turning up, sit on my hands, say nothing and play stumm. Nothing is going to happen. No-one will make orders. We can't get into the court. There is no parenting plan. Sorry, get stuffed'?

Ms Hannan—They will be the cases that end up in court.

Mr KERR—But how will they get to court? That is the point. If there is a threshold—

Ms Hannan—The other partner gets a certificate.

Mr O'Hare—I think that is one of the exceptions that allows you to go straight to court—if the partner will not cooperate. I think you can take that immediately to court.

Mr KERR—I am just trying to make sure that we do not get trapped in a—

Mrs HULL—Revolving door?

Mr KERR—Yes.

Mrs HULL—That is what takes place now. That is the problem that we have now.

Ms ROXON—Or they have more—

Mrs HULL—Not really. Currently, that is exactly what they do. They are ordered to mediation but they do not go. There is no provision to say—

Ms ROXON—But that is not going to get any better.

Mrs HULL—I think it will.

CHAIRMAN—Thank you very much for appearing before us this afternoon. We appreciate your time. A copy of the transcript of your evidence will be sent to you for checking. If you can get back to us with that and also with anything else you have undertaken to give us, we would appreciate it.

Ms Hannan—What time frame do we have for getting the written responses to you?

CHAIRMAN—We want them as soon as possible—this week at the latest—because we have to report.

Ms Hannan—This week?

CHAIRMAN—This week. Could you also, Tony, send me a list of your centres in south-east Queensland?

Mr O'Hare—Yes.

CHAIRMAN—Thank you.

[3.26 pm]

DAVIES, Mrs Nicola Louise, Member, Family Law Council

CHAIRMAN—I welcome the next witness. Mrs Davies, I congratulate you on the size and substance of your submission, which you obviously put together at great effort in a very short space of time. The committee is operating under very firm time constraints. Although the committee does not require you to give evidence under oath, I should advise you that the hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House itself. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. We have received the Family Law Council's submission and it has been authorised for publication. Are you a practising lawyer?

Mrs Davies—I am a practising lawyer. My title is Senior Legal Consultant, Family Law, Legal Aid Queensland.

CHAIRMAN—Based in Brisbane?

Mrs Davies—Yes.

CHAIRMAN—Would you like to deliver a brief opening statement before we ask you questions and have an exchange of views?

Mrs Davies—Thank you for the opportunity to appear before the committee this afternoon. While the Family Law Council's submission is fairly self-explanatory, there are a few points that I would like to briefly highlight for the committee. The council are supportive of the measures in the bill and we think they will achieve the government's objectives provided there is adequate funding for the services the government has announced. Legislation can influence the thinking and actions of parents to encourage and assist them to reach agreements, promote both parents having a meaningful involvement in their children's lives and to protect children from family violence and abuse. However, many other strategies to assist families to parent children are required. It is important for the bill to be viewed in the context of the family law system as a whole and the other reforms the government has announced in response to the *Every picture tells a story* report.

With regard to encouraging parents to reach agreement, it is clear that the bill aims to achieve this by introducing compulsory attendance at family dispute resolution with certain exceptions. For these provisions to work, there must be adequate services for people to attend, such as the proposed family relationship centres. The services will need sufficient funding so that any waiting times are reasonable. Otherwise there will be a bottleneck and people will be unable to obtain the assistance they need to reach an agreement and will be able to file an application in court. It will be essential that people whose circumstances fit those described in the exceptions listed in the bill are identified by the community services as early as possible so that they are not required to attend dispute resolution when it would be inappropriate.

Examples of when it would be inappropriate to require attendance at family dispute resolution include when a parent is unable to effectively participate in dispute resolution because of some disability or when a parent has been a victim of violence perpetrated by the other parent. The council is of the view that nothing should prevent or impede an application for urgent court orders relating to the safety of children and family members. Another example would be when a parent has reasonable grounds to believe that a child is about to be removed from the jurisdiction and wishes to make an urgent application to the court for a parenting order.

The exceptions outlined in the bill will rely on assessments by service providers such as family relationship centres as well as registry staff at the courts that take applications. They will need significant training and carefully crafted assessment tools to appropriately undertake this task. The council supports all of the exceptions to attendance at dispute resolution listed in the bill as currently drafted.

The council supports the meaningful involvement of both parents in their children's lives, provided there are no contra-indications because of significant factors such as child abuse or family violence. Meaningful involvement in a child's life includes playing a significant role in the care of the child and making arrangements for the child. Research suggests that parental cooperation and the quality of the parent-child relationship and its expression across a full range of activities is a central factor for positive child development.

The presumption in the bill provides for joint parental responsibility. The proposed public education campaign will be important to help the wider community to understand what is meant by parental responsibility and that parents usually have joint parental responsibility.

The council is of the view that parents should be encouraged to agree about major long-term issues, as defined in item 6 of schedule 1 of the bill. However, the council has concerns about the wording of subparagraph (e), which currently says 'significant changes to the child's living arrangements'. I would like to elaborate on the council's reasons for recommending a change to the wording of subparagraph (e).

CHAIRMAN—Which section is that?

Mrs Davies—Item 6, schedule 1 on page 5 of the draft bill. It refers to subsection 60D(1). Item 6 proposes inserting some definitions around '*major long-term issues*'.

CHAIRMAN—Yes, it is on page 149 of ours. What was your submission about that?

Mrs Davies—In relation to subparagraph (e), the council considers that an expectation that parents agree on the usual place of residence of a child would in some cases create conflict and increase litigation in a way that damages the interests of children. This provision means that parents will have to agree on the location, type and amenities of a new home if a parent with whom the child spends a significant amount of time wants to move their place of residence. Many parents live in rental accommodation with leases of limited duration, so the need to change the usual place where a child spends significant time may occur frequently. When former partners are in conflict, arguments about such matters may lead to litigation if the parents cannot agree. Decisions about where a child is to live that adversely impact on a child's ability to maintain meaningful involvement with both parents are very different to decisions about changes

to living arrangements which do not affect a child being able to maintain the time they spend with each parent and significant others.

Ms ROXON—Can you go through the wording that you were suggesting there.

Mrs Davies—We are suggesting that it should say 'changes to the child's living arrangements that make it significantly more difficult for a parent to spend time with the child'.

CHAIRMAN—You mentioned removing children from the jurisdiction. How do you define 'the jurisdiction' for the purposes of what you just said?

Mrs Davies—Australia.

CHAIRMAN—Okay. The Shared Parenting Council of Australia, in its submission—and you have probably not seen it—suggested that section 68F should also be amended so that it reads:

"Should a parent wish to change the residence of a child in such a way as to substantially affect the child's ability to reside regularly with the other parent and extended family, the court must be satisfied on reasonable grounds that such relocation is in the best interests of the child."

I presume that means if a parent wanted to remove a child from Brisbane to Perth, for instance. How would the Family Law Council feel about that suggested improvement put by the Shared Parenting Council?

Mrs Davies—I do not think that there is any need to actually put in a specific thing in section 68F(2) in relation to that. I think that all the concepts contained there are already within part VII of the act and I do not think there needs to be in section 68F(2) this specific thing that provides in relation to relocation.

CHAIRMAN—Are you referring to the existing act?

Mrs Davies—Yes.

CHAIRMAN—I think the concern is, though, that a lot of people are successfully removing children from the locality where the child has resided and that, while the court might compel the parent to bring the child back for some element of the proceedings, the court will not always require the child to actually be brought back permanently. Some evidence we have had suggests that some parents are using this as a means of preventing contact.

Mrs Davies—At the end of the day when the court makes a final determination in relation to where a child should live then it is the paramount principle in terms of the best interests of the child that will apply. Therefore whether it is a relocation or whether it is a dispute as to how much time a child should spend with a particular parent, the best interests of the child is the determining factor for the court.

CHAIRMAN—But it would be rarely in the best interests of the child for one parent to relocate the child so far away from the other parent that, all other things being equal, that parent has no meaningful contact.

Mrs Davies—That is why I think the proposal that we are making, in terms of changes to the child's living arrangements that make it significantly more difficult for a parent to spend time with the child, would cover that eventuality.

CHAIRMAN—Have you finished your opening statement?

Mrs Davies—No, I have not quite finished it, thank you. Returning to the issue, it will impact upon the child's long-term future. This actually came from the recommendation of the House of Representatives Standing Committee on Family and Community Affairs. That would appear to emanate from the Family Law Council's original submission to that committee. We recommended at that stage that parents should consult and agree on major issues affecting a child that will impact upon the child's long-term future, including a change of where a child usually lives with a parent. In our discussions on this, the council had in mind relocation decisions that would have a substantial impact on the relationship between the child and one of their parents. It is for that reason that we are proposing that changed wording to proposed subparagraph (e).

Moving on to protecting children from violence and abuse: this must be a pivotal aim of the family law system. It will rely on appropriate support services such as increased numbers of counselling and children's contact services. Children's contact services provide a neutral venue for safe handovers and, where necessary, the opportunity for children to spend time with parents and other family members on a supervised basis. Achieving this aim will also rely on screening by family relationship centres and other services to ensure that cases involving violence and child abuse can be referred to appropriate services, such as support and family violence services. It is essential that item 2 of schedule 1 of the bill, which provides for a new object about parents having meaningful involvement in their children's lives, is seen in the context of the other overarching principle, also set out at item 2 of the bill, that children need to be protected from physical or psychological harm. That concludes my opening statement.

CHAIRMAN—Thank you very much. To what extent do you feel that the bill has successfully implemented the government's response to Mrs Hull's report?

Mrs Davies—As long as the funding is provided for all of the other services that are proposed as part of the government's reforms then what is proposed in the bill meets the four different areas that are proposed in the terms of reference that you have.

CHAIRMAN—I do not think there is any suggestion, though, that funding would not be available for services that are provided in the bill.

Ms ROXON—That is not a matter for the witness, is it?

CHAIRMAN—It was a comment; I just made that remark. You said that yes, provided the funding is available, what is there is good. My observation was that I think any government of any political colour, if it is providing certain reforms and saying we are going to have certain centres, would be very unwise not to provide adequate funding. That was the point I was making. Sorry, I was not asking that as a question; it was a statement.

Mr MURPHY—I am interested in the Family Law Council's support of the proposed amendments in schedule 5, which deal with the removal of references to residence and contact, because you say that they should achieve the purpose of expressing more clearly what ongoing relationships between parents and children are in terms of the time they spend together and the responsibilities each parent has in relation to decisions affecting that child. Can you explain why you support that and how you think it will be clearer?

Mrs Davies—We support it on the basis that the important thing for the children is actually the quality of time that they can spend with each of their parents, that they know that their parents are interested in what they are doing, that their parents are taking an active part in their lives, that their parents are involved in decisions in relation to their future, that their parents take an active role in choosing what school they should go to and that type of thing. It is a not a matter specifically of the amount of time, it is the quality of the time and what each of the parents is able to contribute to the children's lives. In our view, the proposals reflect that by talking about significant time and meaningful involvement. That means more than somebody having a residence order or a contact order.

Mr MURPHY—I understand; thank you.

Mr SECKER—Most of the people who have appeared before us so far have said that they hope this will lead to less litigation. What is the opinion of the Family Law Council on that, seeing as you might be termed as having a vested interest?

Mrs Davies—Hopefully, in the future, there will be less litigation. If subparagraph (e) of item 6 of schedule 1—the one that I referred to in some detail before—remains as currently drafted, it is likely to create more litigation.

Mr SECKER—Because it is not defined clearly enough?

Mrs Davies—Yes.

Mr SECKER—What about the addition of section 65DAC which requires consultation and joint decision making between those with parenting responsibility on major long-term issues?

Mrs Davies—Then it depends on the definition of 'major long-term issues'. Our concern is that, as currently drafted, that will create more litigation. If there is a new set of rules, if you like, and also a community education campaign around it, the likelihood is that initially there will be more litigation because people will think that that is something that they can be a part of. In the longer term, if the family relationship centres and the family dispute resolution processes are all bedded down and work as we hope they will then litigation will be reduced in the future.

Mr SECKER—One of the biggest complaints I get from disgruntled parents is that court orders are not enforced. Do you have a comment on that?

Mrs Davies—It has certainly been an ongoing problem, probably since 1976 when the act first came in. Part of the problem is that, often, some things are just not working, as opposed to somebody deliberately contravening the order. Obviously, there are those cases where people do

deliberately contravene, but often the circumstances of the child or the parents have changed and therefore the court order does not currently work for them.

Mr SECKER—That does not apply to any of the cases that are brought to me. These are recent court orders from a year or two ago and things have not changed. It is a matter of one parent getting back at another. And they are not enforced.

Mrs Davies—In terms of them not being enforced, it is a matter for the court to properly apply the enforcement regime that they have in the act now.

CHAIRMAN—But they are not.

Mrs Davies—The feeling in parts of the community is that that is not being enforced.

CHAIRMAN—What is your view?

Mrs Davies—My view is that in most cases where there is a flagrant breach and it is brought before the court then some enforcement takes place.

CHAIRMAN—It does?

Mrs Davies—Yes.

Mr SECKER—What about perjury cases? I get complaints about lies being told in cases. But perjury never seems to be followed up.

Mrs Davies—What cases?

Mr SECKER—Cases of perjury in family law cases where one of the aggrieved people gets up and says something that is proven to be a complete lie but which is never followed up in a perjury case.

Mrs Davies—That is not something I have any data on. I can try and find out if the council can provide you with any information in relation to that. But that is not—

Mr SECKER—I would appreciate that. What is your feeling about costs being awarded against people who do make false allegations? I know that there is a difficulty in proving false allegations, but what is your feeling about costs being awarded in proven false allegation cases?

Mrs Davies—If the allegation is proved to be false to the appropriate standard then the court could and should be able to make cost orders.

Mr SECKER—The biggest problem I am coming to terms with is the definition of 'violence' and whether it should be more narrow. Should it be 'serious violence' or 'the possibility of violence' or should it be left the same as it is now, which is a very wide definition which can be open to very loose interpretation?

Mrs Davies—I am not sure what your question is.

Mr SECKER—Do you think we should strengthen the definition of 'violence'? People can avoid going through this process, for example. Someone can say, 'This person is going to be violent against me,' and will not have to go through the process. They can also use that as a mitigating factor in their case for shared care of children. There are variations, from trivial violence, shall we say, to quite extreme violence. At the moment, the definition includes trivial violence.

Mrs Davies—I do not necessarily agree that there is any such thing as trivial violence.

Mr SECKER—An example that was brought to us today was of somebody standing outside the window saying, 'I want to see my children,' at the top of his voice.

Mrs Davies—In terms of your question in relation to violence, the current definition in the act is probably the one that needs to be there. But in terms of your point about the fact that you can avoid going through a dispute resolution process, we are not aware of any real evidence that people wish to avoid going through those processes. In any event, just because somebody gets to court under this new process does not mean to say that the court cannot then refer them to an appropriate resolution process if, on considering the detail of the information that is put forward by both of the parties—

Mr SECKER—I probably used the wrong example of where it might take effect. But in a decision on the sharing out of the parental responsibility, an AVO might be taken into account. It was given to us in evidence that an AVO might be issued because of someone standing outside a window saying they wanted to see their children. That is because there is a very broad definition of what violence is or how an AVO can be brought on. If it was a bit tighter—

Mrs Davies—If the court were making a decision in relation to joint parental responsibility, the fact that there was an AVO in existence would just be one of the things that they would take into account. They would also take into account evidence from both parties, other witnesses and independent people in terms of what had happened in relation to the children and the parents.

Mr SECKER—So you are saying that you are not concerned about the definition of violence, just using that term.

Mrs Davies—No.

Mrs HULL—I have four questions. Three of them are about your submission. Under recommendation 21, you have suggested that section 118 be amended. I cannot quite understand how your recommendation changes what is currently under section 118. This is on page 518 of the document that we have here. Recommendation 21 states:

That s 118 be amended to allow the Court to dismiss proceedings at any stage if it considers that they have no reasonable prospect of success.

Do you mean exactly those words? Those words are not exactly in there. I am trying to work out the difference in what you are saying, because it seems to me that it currently almost covers what

you are saying. I am trying to get really specific to work out why you have actually recommended that. Maybe it is because you want them to say that they have 'no reasonable prospect of success'. It currently says:

(1) The court may, at any stage of proceedings under this Act, if it is satisfied that the proceedings are frivolous or vexatious:

(a) dismiss the proceedings;

(b) make such order as to costs as the court considers just; and

(c) if the court considers appropriate, on the application of a party to the proceedings—order that the person who instituted the proceedings shall not, without leave of a court having jurisdiction under this Act, institute proceedings ...

I am just tyring to work out what that recommendation specifically wants to do that is not currently in the legislation.

Mrs Davies—My understanding of it is that the current legislation only refers to 'frivolous' and 'vexatious'. It does not refer to there being no reasonable prospect of success.

Mrs HULL—I see. You state:

That s 118 be amended to allow the Court to dismiss proceedings at any stage ...

So you are saying that that is only for frivolous or vexatious proceedings, not for those with no reasonable prospect of success.

Mrs Davies—As it currently stands. We are saying that it should include 'no reasonable prospect of success' as well as frivolous and vexatious.

Ms ROXON—The submission Mrs Hull is referring does not have recommendations about this bill; those are recommendations on the discussion paper, aren't they?

Mrs HULL—I understand that. I am asking: do you still consider that that would be something that should be included?

Mrs Davies—I believe that that is still the council's view.

Mrs HULL—You speak in your submission on parenting plans. There was some thought as to parenting plans—that we should change 68F(2) to include parenting plans which are not registered as a parenting plan. Is there any reason we could not include that as part of 68F(2) without requiring the legal profession to be part of the preparation of a parenting plan? If you are going to go into a session at a family relationship centre and you are going to be preparing a parenting plan and it is actually agreed to, is there any reason you could not include something like that—that the parenting plan be taken into consideration without the fact that it has had somebody legally putting it into a format?

Mrs Davies—There is no reason why it could not be in section 68F(2). My understanding is that the bill as currently drafted actually provides for that in proposed section 65DAB.

Mrs HULL—It does, but I was just wondering if it could be still another area.

Mrs Davies—I would not have thought that it was necessary as long as proposed section 65DAB, as drafted, remains.

Mrs HULL—There is a third thing that I would like to ask. We have had issues about case law. When I was doing the inquiry before, I sat for many weeks in the rear of courtrooms listening to many different proceedings. Case law issues always seemed to be the way in which the cases were dealt with. There was a use of case law rather than of the Family Law Act. I wonder—and it has been raised in here this morning—about the need for some legislative ability to remove existing case law from the system in order for this amended Family Law Act to reach its objective. Do you have a comment on that?

Mrs Davies—It would be a novel idea to remove all previous case law. I would think that it would put people at a disadvantage in trying to work out the way forward if they could not look back to any previous case law at all. It is not something that council has discussed; that is just my view in relation to that. But I think that would cause some problems.

Mr KERR—It worked for the French and the Germans for the last 400 years.

Mrs HULL—Could you come back to us, on notice, with the Family Law Council's point of view on trying to remove case law that is sometimes very prescriptive about how particular issues are dealt with?

Mrs Davies—I will certainly take that on notice, yes.

CHAIRMAN—On that exact point, in the event that case law is not removed, would you agree that the provisions of the bill would have to be tightened and extended to make sure that, within the bill, that case law which we did not want to be there anymore was overturned?

Mrs Davies—If there were a particular line of case authorities that the legislature wanted to overturn or remove, then, yes, in my view, there would have to be something in the bill that addressed that.

CHAIRMAN—Yes, that is what I thought.

Mrs HULL—I have not asked this of anyone. Should family relationship centres be a part of Attorney-General's, in your opinion, or part of Family and Community Services?

Mrs Davies—I do not think that I can comment in relation to that.

Mrs HULL—We talk about the family relationship centres—even in your submission—and I wondered if there was a view about—

Mrs Davies—Again, I can take that on notice.

Mrs HULL—Absolutely, please do.

Mrs Davies—I personally do not have a view on that.

Ms ROXON—You make a recommendation in your submission about removing the best interests of the child test when the court is considering whether it should take account of a parenting plan.

Mrs Davies—Sorry, I do not think—

Ms ROXON—It is on page 3 of your submission, in the second paragraph. The new provision says that where the court are making a parenting order they should have regard to the most recent parenting plan, and so on, provided that it is in the best interests of the child. You have recommended that that should be deleted. I do not understand why it would not be an overwhelming obligation for the court to consider the content of what is in the parenting plan and whether that is in the best interests of the child.

Mrs Davies—This is another matter that I think comes already under section 65E—it is already subject to that and therefore it does not need to be said again in this particular section.

Ms ROXON—So it is not that you think the test should not be applied—

Mrs Davies—No.

Ms ROXON—but you just think it is unnecessary in the provision.

Mrs Davies—That is right.

Ms ROXON—The other thing I want to ask about is your recommendation that immunity should not be provided to the dispute resolution mediators. I can understand that, but I wonder could you explain it to me, given that lawyers have immunity in quite a lot of circumstances. As I say, I would probably support those immunities being removed in a lot more situations too, but I wondered why the law council were making a recommendation on that and not a recommendation that they might apply to lawyers as well.

Mrs Davies—My understanding in relation to solicitors, for example, is that they are not immune from professional negligence claims.

Ms ROXON—Sure.

Mrs Davies—Our recommendation is to bring them in line with other professionals who hold themselves out as professionals to do certain work.

Ms ROXON—So the barristers will be left as having a separate set of rules?

Mrs Davies—There does not appear to be anything within the current bill that would indicate that there is any question that the immunity of barristers is affected in any way by the proposed draft that we are commenting on here.

Ms ROXON—I was just picking up the council's comments in a submission, so thank you for that.

CHAIRMAN—I think all of us are aware of the importance of grandparents in the community, particularly in bringing up their grandchildren. I would like to commend you on your suggested amendment to 60B(2)(a)(ii), with the specific addition of the words 'such as grandparents and other relatives'. That is a very positive initiative.

Mrs Davies—Thank you.

Mr TURNBULL—Perhaps this is something to raise with Mrs Hull. I am trying to understand the concern about case law that was being expressed. We will discuss that subsequently. I think it is a good point. Mrs Davies, let me put this to you: obviously case law is published in the law reports, is referred to in text books and is obviously accessible, but for lay people, for non-lawyers, it is much more inaccessible than the provisions of the statute.

Mrs Davies—Yes.

Mr TURNBULL—Given the nature of this jurisdiction, do you think it would be desirable if the law became more codified and relied less on case law than it does at the moment?

Mrs Davies—My concern in relation to that is the fact that it is, as we know, a very changing environment and case law is able to respond to different circumstances, whereas the legislation may not be reviewed at such a regular interval. It provides guidance for people who were providing information and advice, whether they are lawyers, social scientists or other practitioners, as to the way the law is being implemented at any particular time.

Mr SECKER—As a layman, I need clarification on the case law argument. Are you saying that case law would still prevail or would a lawyer get up and say, 'It may be fine to use that case law, but the law has changed now and I will argue the line that that case law should no longer prevail'?

Mrs Davies—My understanding is that if there is legislative change subsequent to case law, it is the legislative change that takes precedence.

Mr TURNBULL—The vast bulk of the 'case law' in any jurisdiction in fact relies on interpretations of statutory language, so if you change the statutory language then that would have to be reinterpreted.

Mr KERR—Each system has different merits. The civil law system, where there is usually a code that is often expressed in much shorter terms than this legislation and where judges do not in practice refer to other decisions of courts, means that there is a much more variable range of outcomes. That has some advantages and some flexibility, and it has some disadvantages in the sense that you are in a much more unpredictable legal environment. It is almost inevitable in the way in which lawyers and courts operate in Australia, with our common law tradition, that this statute will be interpreted and then the judgments that are made in terms of its interpretation become the boundary lines that are used by other judges. But when these changes come in they override any inconsistent prior case law.

Mr TURNBULL—Yes.

Mrs Davies—Correct.

Mr SECKER—Only if the new lawyer picks it up.

Ms ROXON—No, the court still has to apply it, whether or not the lawyer picks it up

Mr SECKER—You are saying that the judge, for example in the Family Court, would be expected to know all the changes in the new legislation, so if a lawyer, for example, brings up case law based on the old law the judge would be expected to remind the lawyer that the new law is a bit different now and they cannot use that as part of their argument.

Mr KERR—Yes, but of course the wise lawyers responds, 'No, Your Honour, but at least the principle remains the same.'

Mrs HULL—Perhaps we can discuss this further in our private meeting, rather than before the Family Law Council.

CHAIRMAN—Thank you very much for appearing before the committee. A draft of what you have told us will be sent to you for checking. If you could get the additional material to us as soon as possible, we would appreciate it. Thank you for travelling from Queensland to be with us.

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

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Committee adjourned at 4.06 pm