

Introduction

Origin of the inquiry

- 1.1 For many years the Australian community has been extremely concerned about contact and residency issues following marriage and relationship breakdown and their experiences with the Family Court and the Child Support Agency. These have been critical issues brought to the daily agenda of members of parliament by their constituents. Several major parliamentary inquiries and a number of other inquiries have looked into these matters, but the problems persist.¹ Different solutions are obviously needed.
- 1.2 In response to these concerns on 24 June 2003 the Prime Minister announced in the House of Representatives the referral of an inquiry to the House Standing Committee on Family and Community Affairs to look at both family law matters and the Child Support Agency.² In making the announcement the Prime Minister stressed that no one legislative change or pronouncement can alter the concerns, dealing with the matter is a national responsibility, and implied that it is important to the greatest

1 Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, *The Family Law Act 1975: Aspects of its operation and interpretation*, AGPS, Canberra, Nov 1992, xxvii 450p; Joint Select Committee on Certain Family Law Issues, *The operation and effectiveness of the Child Support Scheme*, AGPS, Canberra, Nov 1994, xxxvii 687p; House of Representatives Standing Committee on Legal and Constitutional Affairs, *To have and to hold: Strategies to strengthen marriage and relationships*, CanPrint, Canberra, June 1998, xl 347p; Family Law Pathways Advisory Group, *Out of the maze: Pathways to the future for families experiencing separation: Report of the Family Law Pathways Advisory Group*, Commonwealth Departments of the Attorney-General and Family and Community Services, Canberra, July 2001, xxxv 115p.

2 Howard J MP, *House of Representatives Debates*, 24/6/03, pp 17277-17278.

extent possible, children have the benefit of regular and meaningful contact with both their parents.³

- 1.3 On 26 June 2003 the reference was jointly referred to the committee by the former Attorney General, the Hon Daryl Williams MP and the Minister for Children and Youth Affairs, the Hon Larry Anthony MP.
- 1.4 The terms of reference for the House Family and Community Affairs Committee inquiry are set out at page xvii. The terms of reference are complex and interrelated and address both family law and child support formula matters.

Background to the inquiry: The Government response to the Pathways Report

- 1.5 In referring the reference the two Ministers directed the committee to have regard to the recent Government response to the Family Law Pathways Advisory Group report entitled *Out of the maze: Pathways to the future for families experiencing separation* (Pathways Report)⁴.
- 1.6 In summary the Pathways Report, launched in August 2001, concluded that with the current family law system:
- there was not enough focus on the best interests of the child or child inclusive practices in family law services;
 - the right sort of help and information was not always available to families at the time and place they needed it most;
 - some people managed their separation with little interaction with the system at all whereas others felt frustrated by it, believing in some cases that the system was biased against them;
 - there was little assessment of all of the needs of separating families and too much adversarial behaviour;
 - some parts of the system worked well, but overall it is not as effective as it could be, or should be; and
 - it is clear that a more coordinated and integrated approach to helping families in distress is needed.⁵

3 Howard J MP, *House of Representatives Debates*, 24/6/03, p 17278.

4 Family Law Pathways Advisory Group, xxxv 115p.

5 *Government response to the Family Law Pathways Advisory Group Report*, Attorney-General's Department and Department of Family and Community Services, Canberra, May 2003, pp 7 and 11.

1.7 The Pathways Report made 28 recommendations to deal with those concerns. The Government response addressed implementation of those recommendations under the broad areas of:

- early help involving connecting people to information and services;
- better outcomes for children and young people; and
- an integrated system that meets families' needs.

The recommendations were directed to government, the courts and private professionals and organisations working in the family law system.⁶

1.8 The Government's response to the Pathways Report concluded that:

The Pathways Report provides government and non-government service providers with a map that will guide future changes to the family law system. The goal is to develop an integrated family law system that builds individual and community capacity to achieve the best possible outcomes for families ...⁷

1.9 In undertaking its work this committee accepted the Pathways Report definition of the family law system, that is:

The family law system is much broader than the courts. It also embraces the many service providers and individuals who help families to resolve legal, financial and emotional problems, and is centred around the family members themselves.

...

As well as the Family Courts of Australia and Western Australia, the Federal Magistrates Service and State Magistrates courts, they include Centrelink, the Child Support Agency and other government agencies at national and State and local levels, community-based organisations, private practitioners, advocacy groups and volunteers ...⁸

1.10 Dealing with families in dispute is a difficult issue and requires cooperation between the parties. Governments cannot legislate for good relationships between people.

1.11 The Pathways Report provided a strong backdrop for the House Family and Community Affairs Committee's work and highlights some important directions for change. However, the Pathways Report, as good and useful as it is, did not address the basic philosophical underpinnings of family

6 *Government response to the Family Law Pathways Advisory Group Report*, pp 7-8.

7 *Government response to the Family Law Pathways Advisory Group Report*, p 15.

8 Family Law Pathways Advisory Group, pp xiii 3.

law as this was not within its terms of reference; is conservative in its solutions; and did not consult as widely with the community as is needed.

Part VII of the Family Law Act

- 1.12 The legislative basis for family law matters is the *Family Law Act 1975* (FLA) which was significantly amended in 1995.
- 1.13 Part VII of the FLA relates to children. The object of this Part is set out in subsection 60B(1) as:
- ... to ensure that children receive adequate and proper parenting to help them achieve their full potential, and to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.
- 1.14 The underlying principles also are specified in subsection 60B(2):
- (a) children have the right to know and be cared for by both their parents, regardless of whether their parents are married, separated, have never married or have never lived together; and
 - (b) children have a right of contact, on a regular basis, with both their parents and with other people significant to their care, welfare and development; and
 - (c) parents share duties and responsibilities concerning the care, welfare and development of their children; and
 - (d) parents should agree about the future parenting of their children.
- 1.15 Part VII addresses the concept of parental responsibility; provisions relating to parenting orders, child maintenance orders, and other orders and injunctions relating to children; the principle of the best interest of the child; and includes enforcement orders affecting children.
- 1.16 Parenting responsibility is defined as all the duties, powers, responsibilities and authority which, by law, parents have in relation to children (section 61B). Subsection 61C(1) states that each of the parents of a child who is not 18 has parental responsibility for the child. This subsection has effect despite any changes in the nature of the relationships of the child's parents, for example parents becoming separated or by either or both of them marrying or re-marrying. In addition, this subsection is subject to court orders.

- 1.17 These sections of the FLA clearly demonstrate that both parents have ongoing parenting responsibility for their children. However, the practice falls far short of its intention.

‘Best interests of the child’ are paramount

- 1.18 The starting point for the committee’s inquiry was that the best interests of the child are the paramount consideration. It is the opening statement to the inquiry terms of reference; it is the one irrefutable view held by most participants throughout the committee’s inquiry; it is reflected in the United Nations Convention on the Rights of the Child; and it is enshrined as the paramount consideration in the following sections of the *Family Law Act 1975* (FLA) - section 65E (interim and final parenting orders), section 63H(2) (setting aside parenting plan under section 63H(1)(c)), section 65L(2) (assistance or supervision of parenting orders), section 67L (location orders), section 67V (recovery orders), and subsection 67ZC(2) (welfare orders).
- 1.19 Prior to the *Family Law Reform Act 1995*, the principle of the best interest of the child being paramount was considered to apply to all aspects of proceedings.
- 1.20 A number of other sections in the FLA mention the best interest of the child without specifically making those interests paramount.⁹
- 1.21 In a recent paper Justice Chisholm points out that there are two ways of looking at the paramount consideration principle, with debate about which is appropriate. He said first there is the ‘strong view’ where ‘... the court does not balance the child’s interests against competing interests of other people, but treats the child’s interests as determinative.’¹⁰ Second, the ‘weak view’ where ‘... the paramount consideration does *not* necessarily require the court to make whatever order it thinks best for the child, regardless of other things.’¹¹ Justice Chisholm concludes that ‘...there appear to be two competing approaches, with the tensions between them not easily resolved ...’¹²

9 See Chisholm R, ‘The paramount consideration’: Children’s interests in Family Law, *Australian Journal of Family Law*, 88 (2002) 16, p 110.

10 Chisholm R, p 89.

11 Chisholm R, p 93.

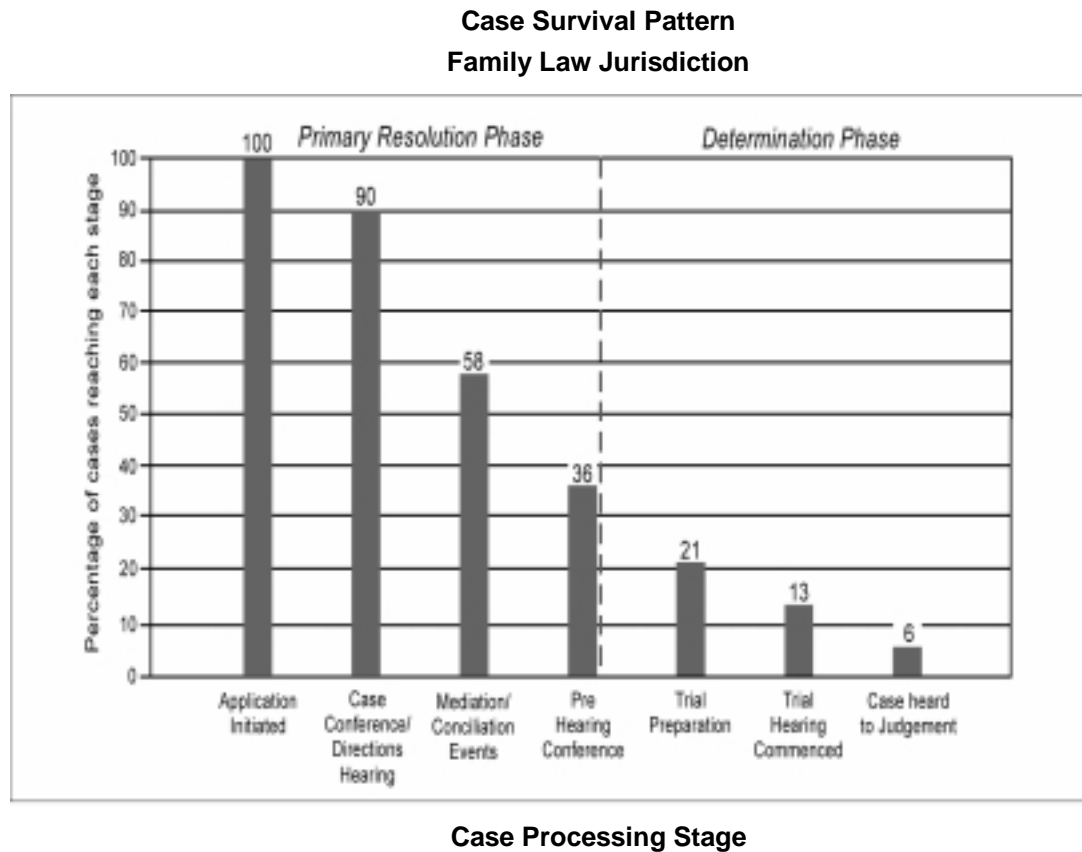
12 Chisholm R, p 115.

- 1.22 Irrespective of who is making decisions about a child's care, welfare and development (that is, the parents or the court or others) the principle should hold.
- 1.23 However, in any family decision making and in a community context outside the area of parenting orders, by consent orders or by the court, the basis on which decisions about the best interests of the child are made is not known, or indeed if that is the basis of the decision. Only about 6% of decisions in the Family Court of Australia go right through to judicial decision. A judge is required to address the best interests but little is known of the basis for decision making in the majority (94%) of cases (see Figure 1.1).¹³
- 1.24 In family law the principle of what is in the best interests of the child is applied to the best interest of the individual child – it takes into account the individual circumstances of each child. The facts the courts must take into account in determining what is in the child's best interest when making parenting orders related to that child are set out in subsection 68F(2) of the FLA. The list is open ended in concluding with 'any other fact or circumstance that the court thinks is relevant.'
- 1.25 These factors may also be considered by the court in making a consent order.
- 1.26 Other relevant sections in determining a child's best interests include sections 60B, 43 and 68K.
- 1.27 The Family Court of Australia (FCoA) advised that in the application of subsection 68F(2):
- Judges must consider each factor separately (where it has relevance to the particular facts and circumstances of the case before them), but they have considerable discretion in determining the weight to be given to each factor ...¹⁴
- 1.28 The FCoA provided an indication of the high or moderate importance of section 68F criteria by undertaking a random sample of six months of cases from January to June 2003 for the FCoA's three largest registries (Sydney, Melbourne and Brisbane). The outcomes of the analysis are shown in Figure 1.2.

13 See Family Court of Australia, sub 1550, p 5.

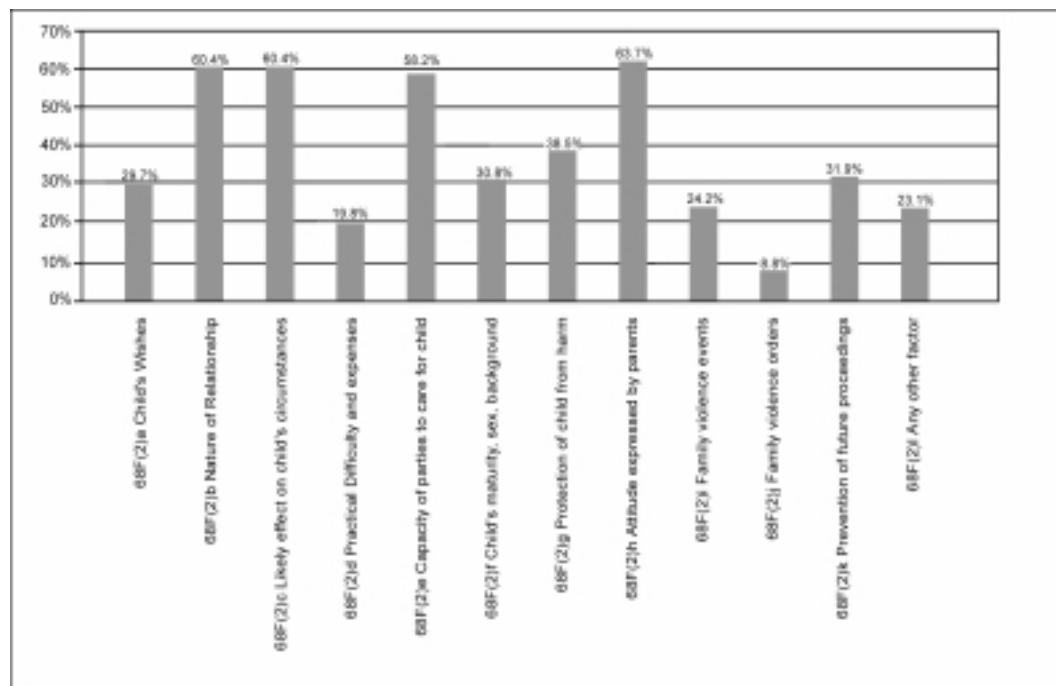
14 Family Court of Australia, sub 751, p 29.

Figure 1.1 Survival Pattern of Applications by Stages—2000–2001



Source: *Family Court of Australia, sub 1550, p 5.*

Figure 1.2 S68F Criteria of High or Moderate Importance in Judicially Determined Matters



Note: This figure depicts the number of occasions in which the indicated criterion was considered in the judgment to be of moderate or high importance. The percentages are therefore not cumulative.

Source: Family Court of Australia, sub 1550, p 10.

- 1.29 The best interests of the child are always evolving. Over time a child's needs change as will the relevance of any of the factors listed in section 68F of the FLA.
- 1.30 However, the committee's attention particularly has been drawn to changes that will occur with child development and age of the child. Children develop different forms of attachments at different ages.
- 1.31 Evidence from the Pathways Report and to the committee has suggested that there are limited opportunities for children to be influential in decisions affecting them. This is another matter stressed to the committee and it is addressed in more detail later in the report.
- 1.32 The needs of children are inextricably linked to the needs of their parents. Consideration of the best interests of children inevitably involves some consideration of the needs of the parents. This is perhaps why when presenting evidence to the committee, parents often commenced by pointing to their child's best interests, but quickly moved to discussing their own needs. In addition, if the stress and conflict between parents can be resolved, it enables them to focus better on the needs of their children. Relationships Australia advised that '...The evidence is also quite clear that it is conflict between parents that impacts most adversely on children when families separate.'¹⁵

The terminology: the words matter

- 1.33 Given that the terminology of 'custody' and 'access' was abolished by the *Family Law Reform Act 1995*, questions have been raised regarding the use of that terminology in the committee's terms of reference. The committee works with the terms of reference it is given. It accepts that there was a change of terminology in the 1995 legislation. The fact that the earlier terminology was used in the terms of reference perhaps is indicative of the lack of success of the 1995 reforms, which has led the committee to seek new and more appropriate terminology through this inquiry's work. Details of this are outlined in the following chapters. However, until the new terminology is introduced in the report, the 1995 terminology 'residence', 'contact' and 'parental responsibility' are used.

15 Gibson D, transcript, 20/10/03, p 27.

Changing patterns of parenting in Australia

1.34 In evidence the Australian Institute of Family Studies (AIFS) stated:

Notions about parenting after separation are grounded in attitudes and beliefs about marriage and the roles of men and women as partners and parents. The changing nature of family life and patterns of women's and men's workforce participation has meant that the parenting roles, expectations and responsibilities of mothers and fathers – whether in intact families or separated families – are in transition. These social and attitudinal shifts have prompted re-evaluation of the previously accepted post-divorce (maternal) “sole custody” model of parenting towards encouraging co-parenting after separation.¹⁶

1.35 Evidence to the committee time and time again has reinforced this view.

1.36 The most reliable and up-to-date data on family characteristics is provided by the Australian Bureau of Statistics (ABS) *Family Characteristics April 1997*¹⁷ published in April 1998. The ABS data reveals the following key statistics on families and children.

Family structure

1.37 Of the 18.1 million people living in private dwellings, 86% lived in family households. Half of Australia's five million families had dependent children present. Of people aged over 15 years, nearly 70% had been or were married. 81.7% of children lived in couple families (see Table 1.1).

Marriage and divorce

1.38 As a result of marriage breakdown many children lived with one natural parent and had another living elsewhere. The ABS *Australian Social Trends 2002* data reveals upward trends in divorce (see Table 1.2). 52.7% of divorces involve children under the age of 18.

1.39 In addition, there are a significant number of de facto relationships that breakdown each year. Many of these relationships also involve children.

16 Australian Institute of Family Studies, sub 1055, p 1.

17 Australian Bureau of Statistics, *Family Characteristics April 1997*, ABS, Canberra, April 1998, 53p, Cat 4442.0.

Table 1.1 Summary of family structure 1997

Family structure	Children '000	%
Couple families		
Intact	3 397.3	73.6
Step	145.2	3.1
Blended	218.6	4.7
<i>Total (a)</i>	3 769.6	81.7
One-parent families		
Lone mother	745.3	16.1
Lone father	100.4	2.2
<i>Total</i>	845.7	18.3
Total (a)	4 615.3	100.0

(a) Includes a small number of 'other' families.

Source: Australian Bureau of Statistics. *Family characteristics April 1997. ABS, Canberra, April 1998, p 29, Cat 4442.0.*

Table 1.2 Marriage and divorce statistics 1990-2000

	Units	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Registered marriages												
Number of marriages	'000	117.0	113.9	114.8	113.3	111.2	109.4	106.1	106.7	110.6	114.3	113.4
Divorce												
Number of divorces	'000	42.6	45.6	45.7	48.4	48.3	49.7	52.5	51.3	51.4	52.6	49.9
Divorces involving children under 18 (of % all divorces)		55.6	54.2	52.9	52.6	52.4	n/a	53.6	54.0	53.4	53.9	52.7
Children under 18 affected by divorce	'000	44.9	46.7	45.7	48.1	47.5	n/a	52.5	51.7	51.6	53.4	49.6

Source: Australian Bureau of Statistics. *Australian social trends 2002: Family – National summary tables. ABS, Canberra, 2002, Cat 4102.0.*

1.40 However, recent as yet unpublished research by Professor David de Vaus of the AIFS, suggests that the divorce rate is now no higher than it was in 1981. He also suggested that more children born to sole mothers living without a partner is driving the degree to which children are living with just one parent. Only 3% of children born between 1963 and 1975 were born to a sole mother; by 2001 this proportion had grown to 11.4%.¹⁸

18 Horin A, High divorce rate? It's just a suburban myth, *Sydney Morning Herald*, 25/10/03.

- 1.41 Marriage breakdown is costly. In June 1998 the House Standing Committee on Legal and Constitutional Affairs estimated that the direct cost of marriage breakdown in Australia was \$2,771 million per annum. They described this estimate as conservative.¹⁹

Parent's time spent on child care

- 1.42 Based on the ABS *Time Use Survey* unpublished data for 1992 and 1997, the ABS drew the following conclusions on the amount of time parents spent on child care.

In 1992, on average, mothers spent 6hrs:46mins per day on child care activities, more than twice as much as fathers (2hrs:31mins). On the other hand, reflecting traditional roles and responsibilities, fathers were far more likely to be employed full-time (83% of fathers compared to 19% of mothers). Nevertheless, the pattern has been changing. As women have been entering the work force, the time they spend with their children has been decreasing (6hrs:7mins in 1997). Little change was evident among fathers (2hrs:24mins per day in 1997) whose involvement in full-time work remained about the same between 1992 and 1997.²⁰

- 1.43 This time data is for all family structures, not just separated families.

Natural parents living elsewhere

- 1.44 Of the 978,400 children with a natural parent living elsewhere, for 88% (859,900) the absent parent is the father and for the remaining 12% (118,500) the absent parent is the mother.

Parental care and visiting arrangements

- 1.45 Only 2.6% of children (25,400) were in shared care arrangements (defined as each natural parent looking after the child for at least 30% of the time)^{21,22}

19 House of Representatives Standing Committee on Legal and Constitutional Affairs, p 50.

20 Australian Bureau of Statistics, *Australian social trends 1999: family – Family functioning: Looking after children*, ABS, Canberra, viewed 26/9/03, <http://www.abs.gov.au/Ausstats/abs%40.nsf/94713ad445ff1425ca25682000192af2/875f852f44a61210ca25699f0005d61d!OpenDocument>

21 Australian Bureau of Statistics, 1998, pp 7, 31, 37, 50.

22 Other figures on shared care are as follows:

4.1% of cases registered with the Child Support Agency were deemed to have equal (or near equal) care of their children, that is, between 40.0-59.9 % of nights. For parents transferring child support privately (Private Collect) the rate of shared care is slightly higher at 6.1%. (Department of Family and Community Services, sub 1251, pp 13-14);

- 1.46 Of the children in sole care, 41.2% visited their other natural parent frequently (at least once per fortnight), 21% visited at least once every month to six months, and 36% visited their other natural parent either rarely (once per year, or less often) or never (see Table 1.3). Of those who visited their other natural parent rarely or never, 106,700 children (33% of those aged 2 years and over) had some contact by telephone or letter.²³ Smyth and Ferro also found that of those who do see their other parent, a significant minority (34%), never stay overnight with them.²⁴

Table 1.3 Parental care arrangements^(a): Frequency of visits

	Number of children (‘000)	Proportion of children (%)
Sole care		
Daily	42.3	4.3
Once a week	212.0	21.7
Once a fortnight	148.6	15.2
Once a month	72.6	7.4
Once every 3 months	82.6	8.4
Once every 6 months	50.4	5.2
Once a year	51.2	5.2
Less than once a year/never	291.1	29.8
Total children in sole care arrangements ^(b)	953.0	97.4
Shared care	25.4	2.6
Total^(b)	978.4	100.0

(a) For children aged 0-17 who have a natural parent living elsewhere.

(b) Includes a small number of ‘not stated’ responses.

Source: Australian Bureau of Statistics. *Family characteristics April 1997*. ABS, Canberra, April 1998, p 37, Cat 4442.0.

4% of the overall Family Tax Benefit customer population have shared care arrangements in place (Department of Family and Community Services, sub 1251, p 25);

6% of children spend more than 30% of the nights per year with the other parent according to Wave 1 of the Household, Income and Labour Dynamics in Australia (HILDA) survey. Data is based on overnight stays of the youngest resident child with the non-resident parent as reported by the resident parent population. It should be noted that more overnight stays are reported by non-resident parents with rates of shared parenting increasing to 6.3%. (Department of Family and Community Services, sub 1251, p 28).

23 Australian Bureau of Statistics, 1998, pp 7, 37.

24 Smyth B & Ferro A, When the difference is night & day: Parent-child contact after separation, *Family Matters*, no 63, Spring/Summer 2002, pp 54-59.

Levels of parental satisfaction with residence and contact

- 1.47 More recent research, such as that by the Household, Income and Labour Dynamics in Australia (HILDA) survey and Parkinson & Smyth into levels of parental satisfaction with residence and contact, have found that a significant proportion of separated parents, especially non-resident fathers, want more contact with their children (40% resident mothers; 75% non-resident fathers).²⁵

Child support

- 1.48 Of the 597,000 families who had a child with a natural parent living elsewhere, 41% received no child support, 42.3% received cash child support and a further 16.3% received only in-kind child support.

Conclusion

- 1.49 The statistics presented in this section suggest, that it is no longer appropriate to define parenting roles by gender alone. Rather, it may be more appropriate to focus on the role that each parent performs.

The committee's inquiry

- 1.50 It is against this background that the committee undertook its inquiry.
- 1.51 From the announcement of the inquiry it was abundantly clear that the issues being addressed are of great concern to the community and touch the lives of almost all Australians. This was reflected in the numerous contributions to the inquiry from the outset. To an extent this meant that the inquiry promoted itself.
- 1.52 The committee initially promoted the inquiry and called for submissions on 3 July 2003 when the chair of the committee issued a media release launching the inquiry. The inquiry was advertised through the House of Representatives fortnightly advertisement in *The Australian* newspaper on Wednesday 9 and 23 July 2003. It also was advertised on the committee's website.
- 1.53 As residence and contact are issues that generate many constituent inquiries to all members of the House of Representatives, the committee invited all members of the House to promote the inquiry within their

25 Australian Institute of Family Studies, sub 1055, p 8; Parkinson P & Smyth B, When the difference is night & day: Some empirical insights into patterns of parent-child contact after separation: Steps forward for families: Research, practice and policy, 8th Australian Institute of Family Studies Conference, 12-14 Feb 2003, Melbourne Exhibition Centre, Southbank, Melbourne, 19p.

electorates. To facilitate promotion the committee provided members with a shell media alert outlining details of the inquiry. All members of the committee, and many members of the House, responded positively and promoted the committee's work.

- 1.54 In addition, the committee invited relevant Commonwealth Ministers, all State and Territory Governments and key peak agencies to each make a submission.
- 1.55 As a result 1716 submissions to the inquiry were received. This is a record for an inquiry by this committee, and amongst the highest ever for a House of Representatives committee. It is about six times the number of submissions (284) received by the Pathways Report inquiry. However, it is about five times less than the number of submissions (6197) received to the 1994 Joint Select Committee on Certain Family Law Issues inquiry that evaluated the Child Support Scheme.²⁶ A list of the submissions received to this committee's inquiry is at Appendix A.
- 1.56 The committee also received copies of 15 form letters from a total of 355 contributors (see Appendix B).
- 1.57 In addition a number of contributors provided copies of their own or other's published works. These were taken as exhibits. 216 exhibits were received and their details are listed at Appendix C.
- 1.58 The committee undertook a wide ranging public hearing program to meet and hear first hand the views and experiences of the community. All but one of the non-Canberra hearings was held in regional locations and the outer suburbs of capital cities. All states and territories were visited. The hearings were advertised by media releases issued by the committee chair, through details on the inquiry website and through advertisements in local newspapers in many of the hearing locations.
- 1.59 At these hearings the committee took evidence from individuals and locally based organisations who presented a wide cross-section of views on the terms of reference. As in all parliamentary committee inquiries, not everyone who made a submission could be asked to give evidence in person.
- 1.60 Due to the confidential nature of some evidence to the inquiry, the committee held eight in camera hearings with 11 witnesses.
- 1.61 To maximise community opportunities for contributions to the inquiry, the committee decided that at the end of each interstate public hearing of invited witnesses, it would hold a one hour community statements

26 Joint Select Committee on Certain Family Law Issues, xxxvii 687p.

segment. This allowed statements of about three minutes duration to be made by members of the public. On average 13 statements were made at each of the 14 hearing where community statements were made, with 188 statements in total.

- 1.62 Following the community consultations, the committee commenced hearings with the major policy and operational agencies, and practitioners and key academics in the family law and child support fields. These hearings were predominantly held in Canberra.
- 1.63 From the hearing program in total, the committee took evidence from 166 witnesses representing 105 organisations or themselves at 21 public hearings. The hearings were held between 28 August and 3 November 2003. Details of the public hearings program and the list of witnesses are at Appendix D.
- 1.64 On 28 October 2003 inspection visits were undertaken to the Registry of the Family Court of Australia at Parramatta, NSW and Unifam's mediation and counselling centre also at Parramatta, NSW.
- 1.65 The importance of hearing children's voices has been stressed earlier. Accordingly, the final evidence gathering events were two forums for the committee to hear first hand the views of children and young people who have been or are involved in family separation. These events were held in Melbourne on 12 November 2003.
- 1.66 One forum was organised and facilitated by Dr Jennifer McIntosh (Family Transitions Pty Ltd) in association with Professor Lawrie Moloney and the Family Mediation Centre. From behind a two way mirror the committee was able to observe and hear the views of nine young children aged 7-13 years. The other forum was organised by Youth Affairs Council of Victoria for the committee to discuss issues with five young people aged 17-23 years. No recordings were taken of these events.
- 1.67 Due to the sensitive and confidential nature of the inquiry, where appropriate, the committee took particular care to protect the identity of individuals presenting evidence and their families. Parliamentary privilege and section 121 of the FLA also require that the committee ensure it is not identifying matters before the courts. As the committee made its evidence (both submissions and transcripts of hearings) publicly available on the inquiry website, even greater care and sensitivity about identification of an individual were demanded.²⁷

27 See <http://www.aph.gov.au/house/committee/fca/childcustody/index.htm>

- 1.68 This meant on occasion that there were some delays in making information presented to the committee publicly available as quickly as the committee might have liked to do, and as occurs with less sensitive inquiries. However, the committee does not resile from its decisions in protecting individuals and their families.
- 1.69 On a number of occasions over the past months there has been debate about the inquiry timeframe. Earlier parliamentary inquiries on related matters, such as the work of the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act and the Joint Select Committee on Certain Family Law Issues, each ran for about 18 months.²⁸ Such timeframes did not of themselves generate better results. The current levels of knowledge, concern and interest in residence, contact and parenting responsibility issues, facilitated this inquiry's timing.
- 1.70 The committee is extremely grateful for the community's response to this work. The openness and generosity of the community was at times overwhelming.
- 1.71 As the committee stressed throughout the information gathering phase of its work, it has approached its task openly, and it did not have preconceived views on the outcomes of the inquiry.

Structure of the report

- 1.72 The structure of the report parallels the terms of reference for the inquiry. Chapters 2, 3 and 4 address the rebuttable presumption, the associated matters of facilitating shared parenting, and a new family focussed process to address parenting matters outside the adversarial court system; and Chapter 5 looks at the children's contact with other persons, including grandparents. Chapter 6 deals with the fairness of the existing child support formula.

²⁸ Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act, xxvii 450p; Joint Select Committee on Certain Family Law Issues, xxxvii 687p.

