

CHAOS AT THE CROSS ROADS

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CONTENTS

INTRODUCTION	3
ORIGINS AND POLITICS	18
THE FIRST DAYS	24
THE WEIGHT OF EVIDENCE: INDIVIDUALS BEFORE THE INQUIRY.....	45
NICHOLSON: THE FINAL DAYS	83
TALES FROM THE SUBMISSIONS	102
THE FINAL DAYS	116

INTRODUCTION

The Prime Minister of Australia John Winston Howard set the hares running in mid-June of 2003 when he told Australia's coalition MPs, and thereby the country, that it might well be worth re-looking at the issue of joint-custody. The story ran all week, and then just kept on running; on talkback, on television and in print. It was classic Howard. He barely needed to say anything. He had touched a raw nerve. Like every other politician in the country, he knew that this so-called "sleeper" issue was asleep no more. The devastating personal and social consequences of the family law and child support systems in Australia were clearly evident to all but the industry itself. which had developed progressively over the previous almost three decades,

While some newspaper editorials hedged their bets, the networks of groups including legal, women's, domestic violence, academics, the judiciary and the bureaucracy, which benefited from the sole custody regime of the Family Court of Australia, were yet to rally their forces. Mr Howard received frequent praise, particularly on radio, for raising a subject that appeared to ignite an egalitarian spirit in the Australian psyche.

Mr Howard told Coalition MPs he was "interested in the broad concept" of rebuttable joint custody - where the court presumes a child should spend roughly equal time or large amounts of time living with each parent unless there are strong reasons against it.

He said he would not commit his government to it. "It may on further examination turn out to be prejudicial to the child, unworkable, but we should be willing to have another look at it," he said.

The flagging of potential custody reforms provoked a tidal wave of coverage and commentary on radio, television and especially talkback and the Shared Parenting Council of Australia, a loose association of 28 fathers and family law reform groups, took on a profile they never dreamed possible, from the national daily to the Townsville Bulletin. Many of the talkback gurus and much of the reporting of the issue was, in the first instance, positive towards the idea of joint custody.

Fathers groups were exuberant at the Prime Minister's comments, but a great deal of support came from women.

On the 17th June 2003 a number of newspapers around Australia, including the Adelaide Advertiser, The Australian, the Brisbane Courier Mail, the Melbourne Herald Sun and the Townsville Bulletin prominently reported the story that the Prime Minister John Howard was considering joint custody proposals.

INTRODUCTION

Mr Howard told Coalition MPs he was "interested in the broad concept" of rebuttable joint custody - where the court presumes a child should spend equal time living with each parent unless there are strong reasons against it. The papers reported that the Prime Minister has been lobbied heavily by members of his backbench, who had raised repeatedly family support and custody issues at party meetings in recent months - and that Liberal MPs, including Ken Ticehurst, Barry Haase, Jeannie Ferris and Margaret May had led the charge.

The Sydney Morning Herald followed up with a largely sympathetic front-page story using the example of a couple in a shared parenting arrangement who found they loved their kids more than they disliked each other. For the bible of the chattering classes, it was a significant story. They also reported various views for and against, noting the flood of phone calls into MPs offices on the issues. Meanwhile the Australian reported the opponents of the scheme, but followed up with a feature, picture story and editorial.

The Herald Sun also reported that Family Court custody battles face an unprecedented overhaul under plans to slash costs and defuse bitter hearings. The large circulation Melbourne paper quoted Matilda Bawden, president of the Shared Parenting Council of Australia, saying shared parenting would force warring parents to get along.

Shared custody would also benefit other family members, including grandparents, aunts and uncles, who may not see children after a divorce, she said.

Journalist and social commentator Bettina Arndt wrote an opinion piece for the Sydney Morning Herald and The Age, where the story was headlined Fathers May Get Justice At Last, arguing that joint custody is usually better for children and that it was the type of arrangement that most children wanted.

She wrote:

"John Howard made a crucial decision this week to support a new look at child custody. By doing this, he is acknowledging the festering community discontent over the failure of the family law system to effectively handle this most emotional issue.

"Next week, federal cabinet will meet to approve terms of reference for an inquiry into child custody issues by the House of Representatives family and community affairs committee. These seem set to include not only a presumption favouring joint custody but also, amazingly, the question of whether the Child Support Act is fair to both parents, as well as changes in child support to cover costs of contact. These are all highly controversial issues.

"Very few Australian children experience the type of care they would prefer after divorce - namely equal care by both parents. Our adversarial family law system, and a long history of the Family Court awarding "custody" to mothers,

INTRODUCTION

has meant that most children of divorced parents are brought up with their fathers cast in a visiting dad role, and contact with the child often at the whim of the mother."

She said that while women's groups would no doubt play the usual "violence card", joint custody is the type of care preferred by most children. While previous pushes for even small reforms have been torpedoed by left wing parties firmly in the sole parent camp, "this time the push for change has the backing of a powerful, popular Prime Minister with a record of supporting fatherhood".

In what was little more than a dream come true for family law reformers, at the end of the week "Give Dads A Go" was the front page headline of the high circulation high profile Sydney tabloid The Daily Telegraph, a newspaper any Australian politician ignores at their peril.

The paper wrote: "Young boys need a male role model in their lives, Prime Minister John Howard said yesterday, paving the way for broad-ranging changes to child custody laws.

"Mr Howard yesterday singled out young boys as the group most likely to be affected when their parents separated or divorced.

"He said this was exacerbated where there were no close uncles or relatives because there were now fewer male teachers.

"It is a view that has led him to consider allowing immediate joint-custody to divorced dads and mums."

Also on the 18th the government funded ABC radio reporter Ben Knight interviewed Senator Jeannie Ferris, Matilda Bawden of the SPCA and Chief Justice Nicholson of the Family Court of Australia. The program noted that the present system has created enormous bitterness. Senator Ferris suggested that joint custody could from "the position that both parents would be considered to be jointly responsible for a child. Not one parent or the other would have, if you like, a superior right based on the residency of the child. It would then be up to each individual family to work out how the arrangements would apply to them."

Bawden said the proposals would "take litigation out of the family break-down picture to the greatest extent possible and encouraging parents, wherever that is possible, to work it out themselves. Get the lawyers, get the judges, the psychologists and social workers out of the picture and families might stand a chance of working things out."

But repeating an assertion he would make many times in the coming months, both to the media and to the inquiry, the ever controversial Chief Justice of the Family Court Alastair Nicholson said: "I think that's just impracticable and it's not children focussed. This is a big country, for example, and how do you divide the time of a child, if one parent's in Alice Springs and the other one is

in Melbourne. Do you shunt them back and forwards via plane, and half the time the parents can't afford it.

"But more importantly than that, you've got situations where they live on the other sides of cities and many children become very unsettled by being battered backwards and forwards like a ping-pong ball.

"So I just think that the people who are advocating this are coming from the wrong direction. They're not thinking of the children, they're thinking of the parents."

Nicholson also chose the opportunity to argue for a more inquisitorial style of court process where "the judge takes over the control of the proceedings and the judge determines what the evidence is he or she wants to hear.

I think it's faster, I think it's more children focussed and it's more likely to produce results that people will accept."

With the court's reputation at its lowest ebb, the proposals met with no enthusiasm.

Having tested the waters so successfully, the next week, on the 25 June 2003, the Prime Minister announced an inquiry into custody issues, including a brief to examine the notion of rebuttable joint custody or shared parenting, whether or not the child support scheme is fair and issues over contact with grandparents.

It was to unleash a remarkable flood of material.

This book is an attempt to document the progress of the inquiry and its aftermath.

Allegedly charged by the Prime Minister to fix the problem "once and for all", at the end of the day the inquiry's report stirred passions and posed a conundrum for the government.

Charged with reporting by 31 December, the report came in on Monday 29 December, released at a media conference in the nation's capital Canberra and gaining widespread coverage.

The release of the report was front page news but coverage dried up rapidly. Long term family law campaigners were visceral in their contempt for the report. Some said the report in itself resembled a Family Court judgement, it bore no relationship to the evidence and no relationship to reality.

But while the ultimate rejection of the rebuttable presumption of joint custody by the committee created far more problems than it solved, Dads On The Air believes the inquiry in itself will come to be seen as a watershed in family law reform. It brought to public view the many cogent and compelling arguments for reform. And it brought to very public view the impassioned stories of

INTRODUCTION

fathers, mothers, non-custodial mothers, second wives, grandparents and children.

The weight of these stories, both to the public hearings and in submissions, made for a significant body of evidence. They clearly illustrated the dysfunction of the family law and child support systems in Australia. The repeated evidence of dysfunction, corruption and appalling mismanagement of people's lives left the government with no choice but to act.

It took a few hours, sometimes days, for fathers and family law reform advocates to realise how thoroughly they had been duded.

But realise they did. Lone Fathers described the rejection of a rebuttable notion of joint custody as silly and said they would appeal directly to the Prime Minister.

President Barry Williams said reform simply couldn't work without a rebuttable notion of joint custody. "It's just ridiculous that they've rejected it," he told one newspaper. "The number of submissions for shared care far outweighed those against it. They've played into the hands of the people with vested interests: the Family Court, women's groups and the legal profession. They've pressured the committee to reject it."

Rod Hardwick of Dads Australia Dads Australia called the report a betrayal of the million Australian children of separated parents.

Geoffrey Greene of the Shared Parenting Council of said there was bitter disappointment amongst the members over the failure of the committee to embrace a rebuttable presumption of shared parenting. "We don't see how the children's rights to a relationship with their mothers and fathers will be upheld without it," he said. "There is talk of shared parenting all the way through the report but it is all lip service. It is very unlikely we will see any genuine improvement without a rebuttable presumption. My biggest concern is for the million children in Australia, many of whom have inappropriate custody orders, who are after all were the driving force for the inquiry, and there is specifically no provision to improve their lot."

The Men's Rights Agency, which did numerous interviews on the subject right around the country, dismissed it as "the greatest betrayal by any government ever in Australia". "The politicians all knew how crucial this issue was to the many fathers who are denied contact with their children," she said. "They have raised their hopes, only to see them dashed. They will not forget in a hurry. They have put us so far back in seeking shared parenting that it will take years to recover. They have vetoed a presumption of joint custody with no logical argument whatsoever. They have presumed that any parent with on-going conflict with their partner is a danger to their children. How just is that?"

But way back in the middle of 2003 the atmosphere had been completely different.

John Howard told parliament that he was aware, along with members from both sides of the house, that "within the Australian community there is a level of concern and unhappiness with the operation of matters relating to the custody of children following marriage breakdown and a measure of unhappiness with the operation of the Child Support Agency.

"The government wants to respond to that concern because we believe that these are issues that go to the heart of personal happiness for millions of Australians.

"We all aspire to an ideal but an ideal is never realised in an overwhelming majority of cases, and the obligation of society when a marriage breaks down is to have arrangements which are in the best interests of children but which also have proper regard to the interests of the parents of those children. I have expressed before, and I will say it again, that one of the regrettable features of society at the present time is that far too many young boys are growing up without proper male role models."

Mr Howard said he would be asking the House of Representatives Standing Committee on Family and Community Affairs to examine "whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted.

"The committee will also be asked to investigate in what circumstances a court should order that children of separated parents have contact with other persons, including their grandparents.

"We will also be asking the committee to examine whether the existing child support formula works fairly for both parents in relation to their care of, and contact with, their children, because...there are many non-custodial parents in Australia who are profoundly unhappy with the existing formula used by the Child Support Agency and wish that matter to be examined.

"We are asking the committee to report to the parliament by 31 December. There is no point giving it two or three years. I think that six months, given the intensity and amount of public interest in this matter, is an appropriate period of time.

"I encourage the committee not to see its remit as a licence to recommend large increases in the expenditure of taxpayers' money but rather to look at the structure of these arrangements. I cannot think of anything that is more important to millions of Australians than current custody arrangements. This issue is properly the concern of the national parliament, and I hope it brings forth the genuine bipartisan involvement of the opposition."

Radio, television and newspapers once again all ran the story prominently, much of it positive to the notion of shared parenting. Talkback once again ran strongly in favour, with callers split equally between men and women. It appeared in the first flush a clear vote winner.

INTRODUCTION

Some of the toughest women journalists in the country penned passionate pieces in support.

On the 24th of June, under the headline Dad's the other word, the Courier Mail ran a piece by former bureau chief for The Australian Madonna King and former Deputy Editor at The Daily Telegraph. She wrote:

“THIS year, more than 1000 fathers will commit suicide, many such deaths blamed on family law issues. This weekend fathers across Australia will travel to pick up children for an access visit to find their children missing. And today, hundreds of mothers will seek help after their former partner refuses to pay child maintenance.

“And they say family law works. It doesn't and it's about time it was overhauled.

“For 20 years, we've told our fathers, our husbands and our sons to play a bigger role in their families, to spend fewer hours at work and to take a bigger role in their children's future. And they have.

“Then, when a relationship breaks down, reports suggest only 3 per cent of fathers are awarded equal joint custody.

“It's about time that changed and Prime Minister John Howard ... should be applauded for flagging his family law review.”

One of the Sydney Morning Herald's most senior and experienced reporters Paola Totaro penned an opinion piece calling the decision to re-look at joint custody as humane and long overdue and saying it was a win not just for “angry dads” but “for the thousands of silent women and men who choose to put their children not bitterness and anger first.”

She derided another of the paper's prominent female columnists for suggesting that while divorced fathers may have a point about wanting more time with their kids, seeking equal time was veering into “dangerous territory”.

“Angry dads”? “Dangerous territory” for men to want to have equal time with their children?

“As a woman, divorced mother and now a remarried stepmum too, these arguments strike me as the worst kind of sexism.

“How can we, as a civilised society, continue to suggest that capable men do not have the same rights to bring up their children, post-divorce, as their female partners?

“And how can we women who quite rightly expect and enjoy an equitable arrangement both in parenting and in the domestic environment inside marriage then argue that post-divorce, only motherhood is sacrosanct?”

The Adelaide Advertiser also gave the story a good run, with a feature entitled: "Question of Balance".

It quoted Michael Green QC, author of *Fathers After Divorce*, extensively. He said: "When people think of separation they think of lawyers, and all too easily run off to find out what their rights are. The true question separating couples should ask themselves is not what are our rights and responsibilities now but what are the best arrangements we can make for this family."

The Advertiser said: "It is a message being heard in MPs' offices around the nation, where staff are often snowed under with traumatised parents and grandparents denied the right to see their children. But it is a message MPs have seemingly failed to act on - until now."

The paper went on to detail the commitment of a number of MPs to the issue. It reported that among Liberal MPs pushing for change is Parliamentary Secretary Jackie Kelly, who advises Mr Howard on women's issues. She spends hours in her Sydney electorate office trying to help parents gain access to their children. "Access is the killer and access is the tragedy," she says.

"The enforcement of it is a joke. It really must be about acting in the children's interests. Children really need both parents ... we are really chopping off whole extended families - the grandparents, the aunts and the uncles. I believe we will be paying as a Federal Government for that social injustice 20 or 30 years down the track."

On Saturday the West Australian editorialised: "THE review of child custody laws promised by Prime Minister John Howard will be contentious but necessary. Mr Howard identified an increasingly worrying social trend when he said too many boys grew up without male role models after their parents divorced."

"He has been criticised often for his conservatism and apparent attachment to the past - the so-called white picket fence view of the world. But he is right this time."

"Ideally, children should be brought up by both parents. Loving mothers and fathers, in cooperation, both have vital contributions to make in caring for children." It went on to say: "There is a significant body of opinion that men endure systematic discrimination under the present arrangements. It is not surprising that coalition MPs have raised concerns about what they say are unfair access arrangements and child-support payments."

"There are many furious men who assert - sometimes in concert with new wives or partners - that they have been duded by their former wives and denied justice by the court. This chorus seems to be getting louder."

"Proposals for reform might be driven by disaffected fathers, but the main issue has to be the effects on children of the current arrangements....Mr Howard's review is timely and should be supported by everybody with the best interests of children at heart."

While in the west reaction was overwhelmingly positive, the SMH, under the headline "Raising children together, separately" suggested the answer to the problems for divorced families may not lie in rebuttable joint custody but did acknowledge that "there is a great deal to be said in favour of two capable, competent, stable parents raising their children co-operatively but separately." Ridiculously, the editorial suggested that the fundamental flaw in the proposal was that it seeks to impose a standard solution on a complex and highly emotive issue, ignoring the fact that the Family Court already imposes a once every second weekend regime which clearly fails to comply with the Court's legislative obligations to act in the "best interests of the child". But having a bet each way, the paper concluded that "There are no remaining legal barriers to effective joint custody. This suggests it is attitudes - of the community, parents and judges - which must now change."

Also on Saturday the Age ran an oddly conspiratorial story on its front page suggesting that a group of disgruntled Adelaide dads had laid the groundwork for custody reform. Reaction to the story suggested John Howard, as the wiliest and most successful conservative politician of modern times, was more than capable of recognising a hot button issue in the electorate all on his own. Fathers who have met with him all report him sympathetic.

At the end of the week The Sun Herald in Sydney ran an editorial under the headline "We owe our sad kids a fairer go". It began: "They live next door, across the road and in every classroom in the country. Sometimes they're even in our own homes. They're the children of what are called 'dissolved partnerships'. It went on to say that "children are the silent sufferers in angry confrontations between warring parents. They often are used as weapons of retribution... The world has moved on since the Family Law Act was introduced in 1975... Even though the Family Law courts must place the children's best interests first, only three per cent of orders made are for joint custody." The editorial concluded that behind the statistics of more than 50,000 children being affected each year "lie the stories of great tragedy, revealed only in the secrecy of the Family Court or the anguish of mediation conferences. We await with great interest the establishment of the committee, its terms of reference and its deliberations."

A number of family law reform groups put out press releases in support of the inquiry. The Shared Parenting Council of Australia put out a congratulatory release heaping praise not just on the Prime Minister but "the numerous backbench Coalition Members and Senators who have supported this review". The formation of the SPCA the previous year, a representative body of various children's, father's and church groups around Australia, was one of the many crystallising forces leading up to the inquiry.

INTRODUCTION

The statement said: "The current 'one size fits all' model of sole custody Orders of the Family Court has clearly failed children and the wider Australian society and must be reformed. Children of separating or divorcing parents are the real victims of current failed Family Law policies. Under the sole custody regime, children are automatically deprived of a continuing and meaningful relationship with both their parents, and the social outcomes for children as a result of this loss is a national disgrace.

"Only by recognising and upholding the fundamental rights of children to maintain an equal relationship and opportunity with both their mother and father will society reduce the impact of family breakdown on children of divorce".

Reliable Parents from West Australia also congratulated John Howard; going on to say the introduction of a presumption of shared parenting would represent a shift from sole parent possession of children to an arrangement that recognises the needs and responsibilities of all involved. "At present many families reach an agreement on parenting based on the impediments to equitable arrangements brought about by obstacles put before the non-resident parent. These include lack of legal assistance and family court pressures to accept lesser contact in order to avoid the high costs associated with court appearances."

Spokesman for the group Tony Borger said the sole parent model showed little regard for the best interests of the children.

He went on to state that children share equally in the lives of their parents prior to divorce and every means should be explored to ensure this continues, where practical, after divorce. "After all it is the parents that are divorcing, not the children," he said.

Men's Confraternity, a particularly active and outspoken group, also from Western Australia, claimed jubilation. Men's Confraternity, which was established in 1985, has consistently called for the actions of the Family Court to be challenged.

"Finally Australia has a Prime Minister who has the courage to tackle this immensely difficult issue, in the hope of creating a system that no longer discriminates against children and fathers," they said.

"The current adversarial system of winner takes all, has contributed to the escalating divorce rate being initiated predominately by females, and lead to the appalling level of suicide amongst divorced and separated men. Contrary to the misandrist ravings of many women's organisations, men truly love and care for their children, and the current Family Court system, which actively seeks to alienate them from their children, has resulted in a shocking loss of life.

"Research both within Australia and internationally, strongly supports the irreplaceable role that fathers play in the development and growth of children.

INTRODUCTION

The sole parent regime purported by the Family Court and it's Chief Justice Alastair Nicholson to be in the child's best interest, is a complete failure."

Most papers published a scattering of letters in support of shared parenting. The West Australian ran a letter from Lionel Richards, who runs the OzyDads internet chatline, linked the recent spate of juvenile crime in the west. He wrote: "The problem with delinquent youths in the streets at night is that they are living in fatherless homes with many suffering very low self-esteem as a result of parental alienation and denigration of the absent father.

"As well as the obvious drop in the abhorrent suicide rate of disfranchised dads, the Federal Government's announcement of shared parenting presumption as the default position in family breakdown will go a long way to remedying the problem of our youths on the streets at night."

At first it appeared that family law reformers were fortunate in the constitution of the committee. All of whom expressed to considerable understanding of the issues from their work as parliamentarians.

There was some argument over whether the inquiry should have gone to the Legal and Constitutional Committee; which would have produced an entirely different inquiry; something along the lines of the previously failed Family Law Pathways Advisory Group report Out of the Maze from the previous year.

That inquiry had also stirred hope and confusion in equal measure; and become a class study in bureaucratic frustration of reform.

The standing committee is one of 13 general-purpose investigatory committees established by the House of Representatives of the Parliament of Australia.

The role of the Standing Committee on Family and Community Affairs is to carry out inquiries into matters referred to it by the House of Representatives or a Minister of the Commonwealth Government.

The committee Chairwoman was Mrs Kay Hull, the National Party member for Riverina. Known as the "pocket dynamo" for her size and energy, she was both popular in her own electorate and generally.

While there was a great deal of criticism levelled at the final report Every Picture Tells A Story, through the public phases of the inquiry Kay Hull established a distinguished and authoritative hold over the committee's proceedings and brought to the job a great deal of intelligence and personal charm.

As the mother of three adult sons and a proud grandmother in one of the many rural areas badly affected by family law, she could hardly have failed to understand the depth of hostility in the community over the family law and child support industry.

INTRODUCTION

Ms Hull said early on in the piece that the problems with family law and child support had been evident for some time. She continued to make public statements questioning the status quo and suggesting significant change was appropriate.

Another member, Roger Price, MP for the western Sydney electorate of Campbelltown, had been chairman of the 1994 joint select committee inquiry into the child support scheme. This far reaching investigation had received a flood of complaint about the Agency a mere five years after its creation. Price had previously expressed anger by the failure to implement most of the recommendations of the inquiry, with the bureaucracy only cherry picking the most punitive of the recommendations and ignoring others, such as a study of the social impacts of the scheme.

He was almost belligerent in his questioning of some witnesses as to why a 50:50 presumption would not work. He has previously said the hurt and individual pain that so many experience has only made him more radical on the issue since he was Chair of the 1992 inquiry into child support. He had described the level of anger in the community is frightening.

Chris Pearce, also on the committee, penned a piece in the Herald Sun in early November titled "Sharing parents for life" which said the Family Law Act of 1975 had sought to deal with separating families in a fair and sensitive manner but "with the benefit of 30 years' experience, the overwhelming evidence from children, parents and professionals reveals significant flaws in the system."

He wrote that although it may be challenging at times, shared parenting had many advantages. "It would allow both parents to be active and ongoing role models for their children. It would provide greater equality between the parental roles of the mother and father, which is often a source of conflict. This greater equality would mean that separated parents would be less likely to become overwhelmed by the burden of sole parenting or largely cut out of a child's life."

Also on the committee were Deputy Chair Mrs Julia Irwin, of the Australian Labor Party, Alan Cadman, Trish Draper, Cameron Thompson and Peter Dutton from the Liberal Party, a former policeman who's line of inquiry during the hearings indicated a clear disgust for the present system. There was also Jennie George, the well known former President of the ACTU and the ever volatile Harry Quick, both of the Australian Labor Party. The latter's derisive comments towards the judiciary and the "industry" during the progress of the public hearings did much to enliven the inquiry.

Kay Hull was going into Question Time in the House of Representatives when she heard news of the inquiry. "I thought to myself that is an amazing job for someone and one that would be very difficult and I was rendered a little speechless when it turned out we would be doing it. I was quite gob smacked. I picked myself up off the floor and said here we are, we are going to be very busy."

The committee set about hiring extra staff and organising an itinerary. A date for receipt of submissions of Friday 8 August 2003 was set. The tight deadline was designed to focus attention in an emotive and divisive area and to avoid prolonged campaigning and manoeuvring by various opposing interest groups. However the committee continued to accept all submissions after this date and repeatedly said they were prepared to accept any material right up to the end.

Coverage of the inquiry continued to be diverse but largely positive.

The country's leading research institute on father's issues the Men's Health and Information Resource Centre at the University of Western Sydney urged general practitioners to be more aware of the poor health and outcomes of separated men

The latest Australian Bureau of Statistics report revealed that in the prime divorce age bracket -- of 25 to 44 years -- suicides remain stubbornly high, or are increasing. This age group of men accounts for almost 50 per cent of all suicides.

Professor John MacDonald said GPs, along with other professionals, were well equipped to help play an important role.

"The sources of stress belong in the social domain and often in the legal domain," he said. "But if the doctor has a list of relevant agencies that can help, some legal agencies rather than medical, for example, then such a GP would be bringing a holistic service to his clients."

At first the slowness of submissions going up on line caused some disquiet; with most of the first fifty or so submissions placed on line in the first few weeks being from the various segments of the divorce industry, and all against shared parenting; seemingly at odds with an inquiry into joint custody.

To begin with the only groups in favour with submissions up on line were The Shared Parenting Council of Australia, the Lone Fathers Association, Tasmanian Men's Health Well Being Association, The Joint Parenting Association and the Australian Family Support Services Association. Already the women's, legal and domestic violence groups, virtually all taxpayer funded, were well represented; including the Women's Information and Referral Exchange, the National Welfare Rights network, the Domestic Violence and Incest Resource Centre, Relationships Australia, the Law Council of Australia, the Human Rights and Equal Opportunity Commission, National Legal Aid, the Governments of Tasmania and South Australia.

But what followed was a flood of many hundreds of submissions, more than 1700 in the end, where in combination with the Hansard transcripts of the public inquiry, the individual stories of people's lives mangled by the family law industry stood out in contrast to the bland assurances of experts.

INTRODUCTION

The politics and personnel in the upper echelons of the Family Court and Attorney General's Department were in flux.

The entire shared parenting or joint custody debate was made more piquant by the fact that these were the final days and months of the reign of Chief Justice of the Family Court of Australia Alastair Nicholson, who had been in position since 1989, only the second Chief Justice in its more than quarter of a century history.

He had been the dominating figure on family law in Australia for the entire modern era, he was either fawned upon by his supporters or regarded with reptilian fascination by his critics. He was leaving behind an institution engulfed in controversy and the subject of the most far reaching and transparent inquiry ever conducted into it.

He had been appointed by the Hawke government in 1989 to the age of 65, which came to pass on August 19th 2003.

But Nicholson didn't go and the government was forced to admit that the retirement ages of Family Court judges had been changed by the previous government without any public discussion or revelation. With no apparent logic to the date, Nicholson declared he would retire in March, 2004. His initial statements that he would take a year's accumulated leave were rescinded and he continued to carry out what he saw as his duties.

During the inquiry there was a change of Attorney General, from the mild mannered and eternally polite Daryl Williams, who family law reformers regarded as totally useless.

His replacement Phillip Ruddock, having survived the immigration portfolio, perhaps more suited to overseeing fundamental reform to the Family.

Daryl Williams was the Attorney General who infamously claimed to an international conference of visiting judges that Australia had a world class family law system, a claim met with astonishment.

Despite the initial wave of support and continuing support on talkback the climate turned colder as the inquiry progressed at least in one sense. The opponents of joint custody, Chief Justice of the Family Court Alastair Nicholson and Sex Discrimination Commissioner Pru Goward in particular, received considerable mainstream media coverage for their utterances and used their appearances at the inquiry to great effect in propagating their views.

But in contrast to this was the tone of the public hearings, where the committee members had appeared to be sceptical of the parade of industry heavyweights appearing before them.

There was, to the very end, a total disconnect between the community experience exemplified by compelling stories of grief, dysfunction and difficulty

INTRODUCTION

with family law and child support issues and the assurances of the industry's experts. This same disconnect between reality and expert carried through into the report and the political process; revealing much

ORIGINS AND POLITICS

**NOTE: THIS CHAPTER IS IN DRAFT FORM ONLY
AND PLACED HERE FOR BACKGROUND**

On the 5th of January 1976 the Family Law Act 1975 came into effect. This marked a historically significant and highly controversial turning point for family life in Australian Society. Making contentious changes to the law relating to marriage, Australia had introduced 'no fault' divorce. For the first time, married couples could seek a divorce from their spouse simply on the basis of irreconcilable differences and that proof of this would be demonstrated by a separation of at least 12 months duration.

The Family Law Act also created the Family Court of Australia to interpret and apply that law and to ensure matters of family breakdown, separation and divorce were managed in a more family friendly manner. Conciliation and counselling services were designed into the Court's structure to assist this process. Children's custody matters were to be determined with the best interests of the child as the paramount consideration and all matters coming before the Court were to receive individual attention specific to the parties unique circumstances.

The original intention of the Family Court of Australia was that it would be an initiative aimed at improving the manner in which separation and marriage dissolution had been previously managed.

Underlying the vision of the Family Law Act, its architect, the late Senator Lionel Murphy, believed that the court would operate on principals supporting humanitarian values. The Court was to be a 'helping' court. The need for improved access to justice was also identified as an aim. The Court's processes were to be less formal, services were to be provided to remote areas and child-care was to be provided for parents using the Court's services. In a speech made in Federal Parliament on the 28 March 1973, Senator Lionel Murphy said, "When a family is broken up, when there is a divorce, at least let us enable those people involved to solve their differences in a decent human and dignified way, and without their being subjected to this kind of expense."

[** INSERT 1975 - The New Regime]

[** INSERT Quotes from 2nd Reading Speeches]

[** INSERT Vote Declaration]

Hansard evidence of the debates surrounding the Family Law Bill, clearly show an intention of the parliament to establish a child custody regime that would see that the care and upbringing of children was to be more equitably shared between separating parents and that this would become Australia's public policy. In parliamentary debate on the 29th October 1974, the late Senator Alan Missen (Lib, VIC) explained that the Family Law regime would "create the concept of joint custody under the law."

[*** INSERT Media Article - High Court forces Family Court to act like a proper Court]

[*** INSERT High Court Case – Re: Legal Processes of the Family Court]

Difficulties with the application and interpretation of the Family Law Act were now evident, and the Family Court's response to the High Court decision meant a resultant change of legal process would lead the Court and its litigants into a more confrontational and adversarial system.

Parliament's intension that the Family Court would operate with less formal processes, and that it would act as a 'helping court' had effectively collapsed, leaving two of the original presumptions of Parliament frustrated and undeliverable.

Families now engaging the Family Court were beginning to agitate their concerns and problems and constituent pressure for further reform was already building in Parliamentary Members and Senators offices around the country.

In 1980, the Fraser Coalition Government set out to hold the first comprehensive inquiry into the operations of the Family Law Act. Many concerns of individual MPs had been canvasses during this period, including proposals to lower the retirement age of Family Court Judges to age 65 (from 70). This was a matter strongly supported by our current Prime Minister and then Fraser Government Minister, John Howard. (Check if Treasurer at the time???)

[*** INSERT 1980 Inquiry Material]

[*** INSERT Quotes from Committee Speeches]

By 1990, there remained clear disquiet in electorate offices of Members of Parliament in relation to the operation of Family Law. By this time there had not been a significant inquiry into the operations of Family Law for over a decade. It was becoming particularly evident, particularly in rural electorate offices, that Family Breakdown was escalating, farmers were losing their generational farming properties with a significant number of people being forced to sell by the application of property division Orders of the Family Court.

Economic circumstances in the early 1990's were extremely difficult for farming families, and the country towns that relied on the income from surrounding farmlands for their survival, were also under severe economic pressures. Drought, escalating interest rates, high debt and pending economic recession were taking their toll throughout rural and regional Australia.

At the federal election held in March 1990, the Liberal/National Party Coalition had a policy committing the Coalition to review the operation of Family Law if elected to Government.

After the election, NSW National Party Senator and Deputy Party Leader in the Senate, David Brownhill, had been agitating strongly for an inquiry into Family Law and sought assistance from other Senators for a comprehensive parliamentary inquiry into the operation and outcomes resulting from current Family Law Practice. Senator Brownhill, himself a farmer and grazier from Mudgee NSW, had a long interest in this issue and held the view that the current Family Law system was significantly contributing to the devastation of rural family life.

Many of his constituent's were watching their livelihoods evaporate in the struggle to maintain their farming operations and many confronted with the further devastation through the loss of their marriages under the economic strains of high debt and rising interest rates.

Increasing masses of rural constituents were facing the final blow of hope and recovery dished out in Family Court judgements. Suicide was on the increase, and country towns were being economically savaged by the exodus of devastated and broken families fleeing to the cities with a hope of securing some kind of job or income.

The most significant complaint made by these rural families, was not in relation to economic issues of the day, but more directly targeting the devastation faced with having to sell farm and grazing property to satisfy Family Court property division Orders following family breakdown. In many cases, and for the first time, Australian farming history with established family farms that had been passed down through families for generations, were rapidly being sold off and liquidated to satisfy Family Court Orders and creditors.

Senator Brownhill continued the push for the Inquiry and by March 1991 had secured the numbers in the Senate to establish at least an inquiry in that chamber. It was hoped that this would convince the then Hawke Government to pursue reasonable and credible Terms of Reference and to expand this inquiry to the House of Representatives.

Senator Robert Hill, Liberal Senator for South Australia, and then Leader of the Opposition in the Senate, said in Parliament on 7th March 1991, "At the outset, I remind the Senate that the last time I spoke in this place on the subject of family law reform was just before Christmas when I was acting for my colleague Senator Brownhill, who was out of the country on parliamentary business. Senator Brownhill has had a project to encourage the setting up of a parliamentary committee to re-examine a number of aspects of family law which have been causing ongoing stress and difficulty within the Australian community, in particular the very challenging subjects of custody, property determinations, access, the cost of family law matters and such related issues. When I last spoke on this issue, I indicated that agreement had been reached between the Opposition parties and the Australian Democrats on a decision to set up such a committee.

“I hoped that the Government, recognising that it no longer had the numbers, would take the next step, logical and sensible in our view, and that was to come to the party and agree to cooperate in the formulation of a set of terms of reference that could best achieve the objectives of all within the Parliament who are interested in the subject of family law reform and, in particular, that the Government would then agree that the committee not only be a committee incorporate utilising senators, but a select joint committee that could bring into account the interests and expertise within both chambers of the Parliament.

“I am pleased that the Government at the last moment has seen the commonsense in that proposal and has indicated that it agrees to Senator Brownhill's proposition that there will now be set up again a joint select committee to examine the aspects of family law that I have mentioned, and other aspects. I commend those who have been involved in the process of negotiation, particularly my colleague Senator Brownhill who has pursued this issue because he believes that it is right and that these controversial areas of law need to be revisited and also on behalf of a very large constituency which has put its faith in him. He has demonstrated that that faith was well warranted.”

Senator Brownhill's concerns were reflected across most rural and regional electorates across Australia and in response to Senator Hill's speech in Parliament, Senator Brownhill said, “I realise that everyone in this chamber would be aware of my interest in family law reform and my efforts in trying to establish an inquiry into certain aspects of the Family Law Act and interpretations of it. I would like to personally put on the record my thanks to Senator Hill for his help and assistance... It was a policy of the Liberal and National parties to have an inquiry into certain aspects of the operation and interpretation of the Family Law Act at the last election. I am very happy that that will now come to fruition. I am also very happy that some members of the Parliament will now be supporting that inquiry. I thank Senator Spindler for his cooperation and support in getting that inquiry on the way.

“The Family Law Amendment Bill is one of a number of amending Bills to the original Family Law Act of 1975, and is indicative of the problems that beset family law. Indeed, there have been 21 separate amendments to the original Act since 1980 when the last parliamentary inquiry was undertaken into a review of the original 1975 Act. “

The Report of the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act had formulated agreement with Senator Brownhill's concerns in relation to Family Farms, and the Inquiry's recommendations 88 and 89 recognised this problem. These recommendations read as follows:-

FAMILY FARMS

88. The Family Law Act 1975 be amended to distinguish farming properties from other matrimonial property so that the Family Court, in addition to other matters, is able to consider the following:

88.1 whether the farming property was brought into the marriage by one or other party or whether it was acquired by both parties and developed after the marriage; and

88.2 the necessity for the retention of a farming property as an income producing unit for the future needs of the separating family.

89. The Family Law Act 1975 be amended to include the above factors as matters to be taken into account by the Family Court in making orders with respect to farming properties.

On conclusion of the Committee's Inquiry and the tabling of the report, the Family Law Council prepared a response to the Minister for Justice, Senator the Hon. Michael Tate which was presented in January 1993.

Interestingly, the Family Law Council agreed with 80% of the 120 recommendations of the Joint Select Committee, however on the vexed farming property issue, the Council's opposition was not explained.

There were various other areas of disagreement from the Family Law Council. One such example was recommendation 29 of the Joint Select Committee report which read, "There be no change to the terminology of the Family Law Act 1975 in relation to custody and access, until such time as there is clear evidence that a change would be advantageous to the settlement of custody and access disputes."

The Family Council expressed their "disappointment" with this recommendation of the Joint Select Committee however, the Family Law Council further stated that "Council will continue to monitor this situation with a view to ensuring that changes in terminology are implemented at an appropriate time". This statement is both arrogant and remarkable in itself considering the Family Law Council have announced an intention to pursue an agenda notwithstanding the elected parliament's clear and reasoned opposition to such reform.

The issue of reforming Family law terminology was to take on a much more significant part of Family Law reform than was reported as necessary or desirable. Clearly, the influence of the Family Law Council within the Attorney-Generals Department and the Hawke and Keating Labor Governments was almost unparalleled. Ultimately, the Family Law Council sought to pursue this agenda, and successfully had Family Law terminology changed in the 1995 Family Law Reform Act. Despite a clear statement from the 1992 Joint Select Committee that unless such a change can be demonstrated to be advantageous to the settlement of custody and access disputes, the Family Law Council and the Keating Labor Government pursued these reforms.

Having effectively ignored the parliamentary committee findings, the terms "custody" and "access" were replaced by the terms "residence" and "contact" in 1996. Almost universally, critics of the Family Court and simultaneously, academics, and even the Chief Justice of the Family Court have finally realised that the terminology change had been a resounding failure, and many family law reform organisations clearly identified it as a "smoke and mirror"

trick to convince the hundreds of thousands of dissatisfied litigants (predominately, but not exclusively fathers) that their minimal contact award is much better for them, because it is now called contact instead of access.

It has also been argued by Family Law critics that the imposition of the will of the Family Court and the Family Law Council over parliament's recommendations for policy reform, has led to a hardened backlash by backbench members and senators to the "Family Law Industry" and more specifically it has increased the resistance to accepting advice ordinarily forwarded to Government by these institutions established under the Family Law Act 1975.

The most recent example of this distrust and parliament's avoidance of seeking advice from the Family Court of Australia and the Family Law Council can be seen by the Federal Parliament's recent calling of an Inquiry into Child Custody and other matters in June 2003, in which the entire inquiry was referred to the Family and Community Affairs Committee, chaired by Kay Hull, and bypassed all aspects of the Family Law Administration and Industry.

This inquiry was established without any reference to the Attorney-General's department, the Family Court of Australia, the Family Law Council, or the Australian Institute for Family Studies. The disappointment for this complete sidelining of the gatekeepers to the Family Law industry was reflected by the Chair of the Family Law Council, Professor John Dewar, when he appeared on the Today Program (Channel 9) with Steve Liebman on 19 June 2003. In response to a question from Steve Leibman whether he (Prof Dewar) had been consulted prior to the Prime Minister's announcement of the pending inquiry, Professor Dewar replied, "No we have not".

THE FIRST DAYS

After the astonishing wave of largely supportive media following the Prime Minister's announcement of an inquiry into joint custody, child support and other matters media attention began to wane. But still in August 2003 there was a steady spattering of positive and negative attention in a number of major newspapers, on radio and on television.

The most prominent opponents of a rebuttable notion of joint custody were Chief Justice of the Family Court Alastair Nicholson, Elspeth McInnes of the National Council of Single Mothers and their children, Patrick Parkinson of Sydney University and Pru Goward, Sex Discrimination Commissioner.

Ms Goward played a spoiler role throughout the inquiry, culminating in claims outside the Wyong Hearing on the NSW Central Coast that fathers needed an auto-cue in order to remember the names of their own children.

The Human Rights and Equal Opportunity Commission put in a submission to the inquiry arguing against joint custody, adopting almost identical positions to the women's groups and claiming that the Child Support formula was "fair". To make such a claim at a time of such heightened condemnation of the scheme and in light of the considerable evidence coming before the committee was in itself remarkable.

Sex Discrimination Commissioner Pru Goward, herself a single mother who the media had always found easy to report, was fresh from a failed bid to convince the government to implement a paid maternity leave scheme; running a tax payer funded campaign which in the end damaged the very government from which they sought support. Once close to the Prime Minister, the relationship between Howard and Goward was rumoured to have cooled.

Right from the beginning Goward was hostile to the joint custody inquiry, making numerous put-down remarks about fathers.

On the 16th of July 2003 the Sydney Morning Herald reported her as saying:

"Equal parenting is not the 16 minutes of child play a day that is the average amount of time men spend with their children." By the time of divorce "one parent by then has invested so much more time and energy in the relationship with the children".

At a speech Goward made at a women's employment conference, she complained about the "unattractive face" of the men's movement focusing on rights rather than responsibilities. "There are men working very long hours, apparently by choice, not accessing family-friendly provisions, but then concerned that their sons have no role models.

“In theory there is nothing stopping men from accessing part-time working arrangements or flexible work hours. In reality, we do not live in a society which tolerates or venerates men who do part-time work or leave work early to pick up a sick child from school.”

One letter writer, Colin Smith in The Daily Telegraph, responded: “The reason most men have to work long hours is because their wives or partners do not wish to do so. They would much rather be home with the children and not have to travel, put in long hours and put up with the daily pressures of work. A survey a few years ago indicated that more than 60 per cent of women did not even wish to work part time if they had a choice. Why? Because they would rather be home, thanks very much.”

She said the parliamentary inquiry into joint custody should explore the question of whether "men should have to put in equal parenting time while the marriage is intact" if they want to be more involved after separation, suggesting there might be fewer divorces if they did.

Goward was saying that the men’s movement wanted 50/50 care arrangements post divorce, “without any suggestion that men will have to put in equal parenting time while the marriage is intact, or that they will need to rearrange their lives if they want to be more involved after separation.”

The Sydney Morning Herald reported Goward as warning of a possible new gender war unless men shared more of the burden of child rearing, and more of the career sacrifices needed to raise a family.

“Shared caring has to start before the divorce,” she said. “It could drive exactly the change that the women’s movement wants if it’s done wisely. Equality between men and women has hit a brick wall, and only the engagement of men in the struggle for work and family balance will move equality closer.”

A Herald letter writer, Colin Anderson, wrote in response: “A child who thrives on the presumption that her father is an equal part of her life before marriage breakdown, whatever the work-family balance, is entitled to the same presumption after marriage breakdown.”

Each time Pru Goward spoke out during the course of the inquiry she attracted negative responses. Sydney’s leading talkback station 2GB reported a “meltdown” over her comments.

On The Daily Telegraph’s feedback one Alan in July asked “How many fathers have to go to court just to see their kids?... Most men work hard and long hours. This is for the family.” Another, Brett Kessner, described her as a “hypocrite” and said “we live in a society that does not value fatherhood”. Another, Wayne Smith, wrote: “Pru Goward has not walked in my shoes, I have three children 2x11yrs 1x10yrs and have paid maintenance for many years... It’s about time that men had equal rights... So Pru Goward, there’s only one attitude that needs changing, yours.”

One woman wrote in support of joint custody, said the father leaving created even more problems for the child and just because society expected men to be the breadwinner didn't mean they should be punished by the courts.

Shane said he thought it was amazing that the Sex Discrimination Commissioner continually groups all men into a single stereotype and offers her sagely advice. "Could you imagine what she would say if any man grouped all women into a single stereotype, then proceeded to explain why they are ALL not up to the standard of the other?"

Luc van Uffelen wrote: "Prior to divorce as a father whilst being on shift work I contributed enormously to the children's welfare. After divorce the Family Law Court deems that I now can see the children every weekend. I have lost that role as a parent by not being there for them. Divorced fathers are certainly being DISCRIMINATED against The upcoming changes being reviewed in Parliament hopefully will give equality back to fathers that so rightly deserve it."

But it was the "auto-cue" comments that provoked the most outrage.

While relatively restrained in her comments to the inquiry at Wyong on Sunday 26th October 2003 the Sydney Morning Herald reported her as saying she believed introducing a presumption that child-sharing arrangements should be 50-50 would "make no difference at all" to the outcome of custody disputes, because "in the end a guy who is working 60 hours a week does not want the kids. He just can't. He sees his primary responsibility as earning money. You will not be able to impose this..." Goward said it was unrealistic to expect a father to step into an equal custody arrangement when he might not have been fulfilling such a role prior to separation. "You can't expect a person to step into that role when the child's ten, having never seen them before, needing an autocue to remember their name."

But at that Wyong hearing, as at many others, there were moving tales of Family Court disasters to counter-balance what was becoming to seem very much like extremism.

One non-custodial woman told the five hour hearing that she had spent \$230,000 in legal fees and had still not been able to gain reasonable access to her children.

The committee and other politicians were quick to seize on the evidence of non-custodial mothers, whose issues were in many ways identical to non-custodial fathers. Local Federal member Ken Ticehurst said: "It proves the case that this is not just an issue for fathers, which is the public perception at the moment."

But despite the mounting body of evidence, it was once again the Sex Discrimination Commissioner that got all the mainstream media coverage, and thereby all the reaction.

In a letter to the Sydney Morning Herald Ian Tuit wrote that Goward's office should be renamed the Sexist Discrimination Commissioner.

"At a time when people in Australia are working harder and longer than at any other time in our history, it is a very poor effort by the Commissioner not to support and encourage fathers trying to balance work and family commitments. The Commissioner's remark that working fathers "need an autocue to remember their children's name" is ludicrous and sexist beyond belief.

"Her statement that separated fathers "don't want the kids" is patronising and ignores recent research by the Australian Institute of Family Studies, which shows that 74% of non-resident fathers would like to have more contact with their children and 41% of resident mothers reported that they would also like to see more contact between fathers and their children.

"How can anyone make these kind of statements and remain Sex Discrimination Commissioner?"

The Shared Parenting Council of Australia put out a press release saying:

"The evidence given by Ms Goward, in reference to the true wishes of men and fathers in Australia, is unsupported by any research and describes the complete opposite position of those fathers who put submissions forward to the current inquiry. Every father's group, church group and grandparent organisations have clearly and unequivocally said that they want to share the care of their children - regardless of the implications to future work patterns."

"Many family law 'experts' and feminist contributors to the current custody inquiry have universally opposed the introduction of shared parenting in family law matters, with spurious and weak arguments against its operation, yet when confronted with the appalling outcomes of the current system, they have failed to provide any guidance or solutions that will alleviate the waste, despair and destruction caused by the Family Court's handling of child custody matters in family breakdown situations."

The public hearing phase of the inquiry began on the 28th August in the Centenary Hall in Greater City of Geelong, an industrial but often scenic centre west of Melbourne. The hearings ran for three hours from 8.30 am and later that same day the committee would move on to Melbourne.

At first no one knew what to expect. Fathers groups remained sceptical from long experience.

The guest list for the first public hearing did not bode for fathers and family law reformers, kicking off with the Women's Information and Referral Exchange, followed by Family Law Working Party, Federation of Community Legal Centres and the Domestic Violence and Incest Resource Centre Inc and No To Violence (NTV), Male Family Violence Prevention

Association Inc. Critics said it was hard to believe that the committee could not find a single fathers group or family law reform advocate in the whole of Geelong.

This disparity however was balanced to some fair degree by previously selected witnesses and community witnesses chosen on the day. In the end, as the inquiry progressed, there was a significant body of evidence from both sides of the fence. The National Council for Single Mothers and their children was one of the most vociferous complainers over their treatment at the inquiry. Kathleen Swinbourne of the Sole Parents Union was also off to a frosty start. Fathers and family law reform groups who appeared as witnesses before the inquiry were generally positive about the experience, saying they were treated with respect, asked intelligent questions and given the opportunity to put across their views.

In her first opening remarks Chairwoman of the Inquiry Mrs Kay Hull, who was widely respected for the intelligence, compassion and authority she brought to the inquiry, said:

“I declare open this first public hearing of the House of Representatives Standing Committee on Family and Community Affairs inquiry into child custody arrangements in the event of family separation. This inquiry addresses a very important issue which touches the lives of all Australians. To date the committee has received over 1,500 submissions. This is a record number for an inquiry by this committee and amongst the highest ever for a House of Representatives committee. We are grateful for the community’s response.

“This is one important way in which the community can express its views.

“From the outset of this inquiry I want to stress that the committee does not have preconceived views on the outcomes of the inquiry. Accordingly, throughout the inquiry we will be seeking to hear a wide range of views on the terms of reference.

“While at any one public hearing we may hear more from one set of views than another set — for example, more from men than from women — by the end of the inquiry we will have heard from a diverse group and thus received a balance over the range of views.

The public hearings the committee is undertaking are focused on regional locations rather than just capital cities. At these regional hearings the focus will be on hearing from individuals and locally based organisations. Later in the inquiry we will hear from the larger organisations, such as the Family Court and Child Support Agency, in Canberra or via videoconferencing.”

Outlining the process that would be basic for more than 20 public hearings right around the country, in both rural and metropolitan locations, Kay Hull said:

"I remind everyone appearing as a witness today that the comments you make are on the public record. You should be cautious in what you say to ensure that you do not identify individuals and do not refer to cases before the court. Aside from that, you should feel free to speak without any fear of reprisal or intimidation.

"About two hours has been set aside for the public hearing. This will be followed by about an hour for community statements of about three minutes duration each so that we can give as many people as possible the opportunity to speak. I ask that each individual speaking in the community statement segment keep their comments to three minutes."

Although the inquiry became more focussed and more searching as it went along, many of the themes were established or hinted at on that first day, in the morning in Geelong and in the afternoon in Melbourne.

The domestic violence industry, which had ballooned over the past 15 years, was to play a significant role in the inquiry and was amply represented.

Some of the groups making submissions include Women's Legal Service Victoria, Women's Information and Referral Exchange, Centre Against Sexual Assault, Hornsby Women's Domestic Violence Court Assistance Program, Armidale Domestic Violence Steering Committee, Australian Coalition of Women Against Violence, Taree Women's Domestic Violence Court Assistant Scheme, Albury Wodonga Women's Refuge, Tweed Shire Women's Service Inc, Hume Domestic Violence Network, Domestic Violence Advocacy Service, Victorian Women's Refuges and Association Domestic Violence Services Inc., and so on.

All argued against joint custody.

There was no countervailing taxpayer funded industry representing the opposite views, of which there were many, on behalf of men.

Yet with the wonders of the world wide web, any disaffected bloke could get on the internet and in five minutes find ample research to indicate that domestic violence was an equal opportunity employer being shamelessly exploited by partisans. Internationally there were numerous voices, in newspapers and without, raising concerns about the operation of the domestic violence industry.

In Human Events, a US public policy newspaper, Dr Stephen Baskerville wrote: "Men's groups are beginning to fight back, pointing out decades of unchallenged research establishing that domestic violence is perpetrated as much by women as men. Most of the domestic violence hysteria is generated for one purpose: to gain advantage in custody battles."

In Australia the size of the domestic violence networks and funding apparatus was on parade throughout the inquiry. The groups mounted very similar

arguments. Essentially that shared parenting is not a good idea because it exposes women and children to the greater risk of violence.

There was no evidence that the hundreds of millions, indeed billions of dollars poured into the area had led to a decline in domestic violence. The reverse was true.

First up at the Inquiry was Ms Louise Mitchell, Development Coordinator with the Women's Information Referral Exchange.

She took little time to get to her point:

"Each year we hear the stories of thousands of Victorian women. From our own experiences in working with women, WIRE contends that joint residency is the optimum outcome for separating families but is not universally achievable.

"We further contend that a presumption of joint residency will expose children and women to violence and abuse.

"The Family Court is currently given discretion to make orders for the residence and contact of children, looking at the situation of each family with reference to a number of factors. It therefore deals with each case that comes before it on its individual merits. WIRE believes that this is the correct approach. It is important to note that it is entirely possible for separating couples to negotiate joint residency under the current Family Law Act. Less than five per cent of couples currently do enter such arrangements voluntarily. We believe that this small proportion, as well as the likelihood of women being awarded custody, stems from women still doing the vast majority of caring for children during relationships and prior to separation and structuring their lives around their children by not working or working only part time, for example.

"The evidence available does not support the idea that men do not fairly obtain access to their children, as the majority of child custody matters are settled independently with the consent of both the mother and the father. Of the cases that are referred to the Family Court, only five per cent are decided by a judge..."

There it was, minutes into the inquiry and one of the great furphies had already been floated.

The Committee including the Chairwoman Kay Hull became progressively clearer in their public rejection of the claim, made repeatedly by apologists for the status quo, that 95% of separated parents settled their differences amicably. "We haven't bought that one," Hull told one media outlet. Within minutes of the claim it was under attack from the committee member Roger Price; who knew from his previous roles in advocating for reform of family law and from his own electorate that the claim was preposterous; that most matters settled unhappily in the shadow of the law, with interim orders soon

becoming permanent as people gave up in frustration. Ms Mitchell was soon taking a question on notice about this issue as well.

The violence card was played for all it was worth; it would not be the last time.

Ms Mitchell said:

“One, if the presumption is of joint residency, children may be forced to live with a violent or abusive parent while the rebuttal proceedings are under way.

Two, it puts the onus on women to prove domestic violence exists despite the underreporting of domestic violence as a crime, particularly non-physical forms of violence or abuse. If a woman has not made reports of domestic violence to the police or other agencies, she may not be able to prove her claims that domestic violence is occurring.

Three, women earn disproportionately lower incomes than men and tend to be worse off financially than men following separation. Given that the vast majority of victims of domestic violence are women, we have grave concerns as to whether women will be able to finance the legal proceedings around rebuttal and that this inability will result in women and children being exposed to violence.

“WIRE believes that it is in the best interests of children that there is a presumption of no contact with a parent where there is any evidence of domestic violence or child abuse until a thorough risk assessment has been undertaken and it is shown in the individual case that that child is safe from abuse and that contact truly is in their best interests.”

Ms Mitchell seemed flabbergasted when Committee member Harry Quick appeared to brush aside her speech and immediately asked what she meant when she said the inquiry itself had arisen over a misconception from men that they do not fairly obtain access to their children.

“I think there is a perception in the community that Family Court proceedings are unfair to men and that men are disproportionately denied access to children,” she said. “We do not believe this is supported by the evidence.”

But she soon became lost for words. Harry Quick asked her about the ability of families to afford two separate households that are completely set up for their children and the impact this might have on second relationships and second families.

Right from the start there was little doubt in which direction the committee was heading. Mr Quick proceeded to say:

“We have this concept of equal time and shared custody. There is an expectation, I guess, that you have two separate households so the children go one week to one and one week to another and that both houses are set up as ideal homes. That is assuming there is not a second relationship and a

second family being introduced. The idea of two identical houses excludes any concept of another relationship and another family. Do you have any views on that?"

To which Ms Mitchell replied: "I do not have any particular views on that."

Committee member Julia Irwin followed up: "Could you comment on how we manage shared parenting or equal time? What strategies does your organisation feel are needed to assist parents who are in an ongoing conflict to manage shared parenting or equal time?"

To which Ms Mitchell replied: "I think it is very difficult for families that do feature a higher degree of conflict to enter into genuine joint residency arrangements."

The gravel voiced Jenny George asked: "Have you thought about ways in which all of this process might be taken out of the litigious area and having some kind of mediating process before parents avail themselves of the court process?"

The reply: "WIRE is not an expert on family law proceedings."

And so it went.

Next up were Ms Belinda Nanfern LO, a member of the Family Law Working Party for the Federation of Community Legal Centres and Ms Helen Yandell, a member of the Federation of Community Legal Centres.

Ms Yandell also took little time to get to her point, noting that there were some concerns that the terms of reference themselves were in contravention of article 31 of the Convention on the Rights of the Child, which requires that the best interests of the child be taken into consideration at all times.

"Because the terms of reference of this inquiry refer to a rebuttable presumption, it is that presumption that is actually contrary to the best interests of the child and the best interests of the child would need to be looked at in each case in detail.

"We believe that each child's circumstances are unique and each family's circumstances are unique, and that is what needs to be taken into consideration when there is family breakdown. In 95 per cent of cases, family breakdowns are sorted out amicably by agreement between the parties and we believe that that right of families to make that determination needs to be maintained. The presumption of share care of children would remove the right of families to make that determination and we believe that would not be in the best interests of children."

Ms Lo backed her colleague: "It is in the children's best interests that they be provided with stability and security in an otherwise traumatic situation that occurs upon relationship breakdown. In order to ascertain what is in the

children's best interests in terms of security and stability, normally the court looks at what the parents' relationship was and roles were prior to the breakdown. Because of the way that society is at the moment, mothers generally are considered the primary caregivers..... I again reiterate Helen's point that only five per cent of marriage breakdowns go to the Family Court and these situations are such that the parties are so conflicted and so divisive that the only way that they can have decisions made in relation to the children is to have a third party's intervention, that being the Family Court."

Roger Price expressed himself shocked at the claim of a breach of UN conventions and said: "I cannot see how the presumption of rebuttable joint residency is inconsistent with anything in the UN Convention on the Rights of the Child."

The Committee was hot on the trail of the 95% myth almost immediately; with Roger Price asking saying: "You seem to place a great deal of weight on the Family Court's much touted five per cent success rate conforming to international standards of best practice for family courts. As a community legal centre, do you get approached by women—and men, for that matter—who believe they have matters they wish to pursue in the court but for which you do not get funding and have to decline? Is that very many? How does that get caught up in the five per cent?"

This was followed by the following exchange:

Mr DUTTON — Can I take you back to a statement that you made—I think I am quoting you correctly—when you said 95 per cent of cases were resolved amicably?

Ms Yandell — Yes.

Mr DUTTON — Where is the evidence of that, or how do you base that statement... Would it be fair to say, though, that there is a vast number of people, and it could be men or women — I am sure five per cent of people would not be adequate to cover them — who opt out of the legal process because it can go on for up to two years in the Family Court.

Ms Yandell — But that is those five per cent.

Mr DUTTON — Let me finish. It can cost tens of thousands of dollars and sometimes people believe it is best to quit not whilst they are ahead but before they get any further behind and they really accept a position that they would not otherwise accept, and it is anything but an amicable situation.

Ms Yandell — I would agree with that within that five per cent."

Even Jenny George weighed in: "I want to query on what basis you make the assumption that, if you do not end up in court, it is all sorted out and things have moved on. I deal with a lot of people where the animosity and the non-resolution of the parents' responsibilities are still very entrenched."

There was however one note of accord. All parties appeared to agree that the adversarial system was an inappropriate way to deal with children. Ms Lo said: “We are talking about an extremely emotional situation. We are talking—no matter what—about their being no winners or losers; children will be suffering at all times....”

“Unfortunately, there are going to be situations where parties are not able to agree, where parties are not able to come to any type of arrangement for the children without the intervention of a third party. That is why, unfortunately, it seems we have the adversarial system for a situation which is probably quite unsuitable for an adversarial system...”

Chair Kay Hull concluded the session saying she took with their submission and would be posting them two pages of questions she had not had time to pose.

Next up were Ms Alice Bailey, who ran Training, Development and Consultancy for Domestic Violence and Incest Resource Centre and Mr Anthony Kelly, who represented the Men’s Referral Service, No to Violence and The Male Family Violence Prevention Association.

In what was already becoming an established pattern, Ms Bailey said: “In cases of family violence, we are concerned about a presumption of shared residency because children should never have residence with a violent parent and because victims of violence are not in a position to equally negotiate with a violent ex-partner about parenting arrangements.”

Amidst frequent, and what critics would see as exaggerated claims of the extent of domestic violence in the community, Ms Bailey went on to say: “Research also shows that perpetrators of violence do use children as tools in the legal process as a means of continuing control over families post separation. Litigation as a form of abuse is not only unaffordable for mothers but also very costly to the community.”

All of these issues that impact negatively on children we believe would be exacerbated by a rebuttable presumption of joint residence. This is because a rebuttable presumption creates a climate of acrimony. It will force parents into an adversarial position and therefore place children at a greater risk of violence and abuse.”

The first of the individual witnesses ended up giving evidence in camera, as his matter was before the courts. Kay Hull said: “I am not prepared to muddy the waters for you, so in the interests of fairness we should not make anything difficult for you or for anyone else.”

Both the Family Court and the Child Support Agency made extremely adverse findings against critics of their systems during the course of the inquiry. While the Chair had ensured witnesses that they could speak freely, there was no parliamentary protection from decisions of the bodies that were most under

investigation; and under attack. The issue was raised by the SPCA but it received little play.

The very first voice to be raised in support of fathers was Witness Two, whose evidence was significant because it illustrated a shared parenting arrangement where there was no love lost between the parties. One of the most common arguments against joint custody was that it would not work without cooperation between the parties. Witness Two was to appear in the mainstream press more than two and a half months later in a sensational story in the leading Melbourne tabloid *The Herald Sun* under the headline *Divorced Dads Pay To See Their Kids*. The paper reported that a Geelong father gave his ex-wife \$10,000 to ensure she signed a court order giving him five days a fortnight with their child.

“Other frustrated dads are paying between \$40 and \$80 a fortnight in exchange for the honouring of court-ordered contact visits. The money these dads pay is on top of compulsory child support payments. Family Court Chief Justice Alastair Nicholson described this ‘cash for kids’ as appalling. ‘One party should not have to pay the other to make children available,’ he said.

Witness Two told the inquiry his daughter benefited it a “huge way” by the shared parenting arrangements that were in place:

“You were talking before about how children could be transferred in situations that are not amicable. My situation is not amicable. It has not been for a year, but it works very well. I have good clear orders and the transfers, in my case, are at the school of my daughter. So she is transferred on a school day. My ex-partner will drop her off and I will pick her up. So we do not have to have detailed or involved contact. As a result that works very well.

“We both still have the best interests of our daughter at heart. But it is very easy to be coerced when you are stressed and upset into going down a legal path that is detrimental to any future relationship or anything from that point on.

“In my environment, I have realised now that to have five days in my case of time with my daughter is extremely unusual in a shared care environment. It is extremely unusual. I cannot believe that, because to me it works fantastically. It is in the best interests of my daughter because she gets time with both parents. She settles in very well. There is less contact. There is less friction, if you like. We do not have any issues. If there were, we could have grandparents who are more than happy to take time with their granddaughter in terms of transfer and things like that. It is very distressing to see some parents having very limited time with their children. The grandparents really get very little at all, either, because they are reluctant to take time with their grandchild away from their own son or daughter.”

After questioning he reiterated he had residence of the child five nights a fortnight. He said: “It is classified as shared care under the law. To me to have such a block of time in a row — not a night here and a night there — makes

the biggest difference. I can get involved with her school, with her friends, with her teachers and with what is going on—dropping her off at school, picking her up from school. Doing that with your child means everything to a child. It is routine. You are involved in their day-to-day life as opposed to being just a weekend parent. Although you can provide a lot in a weekend, you can provide a lot more when you can be involved and grandparents and others and family and friends can be involved with school...

“What is the alternative? To have a home where you spend only two days? From my point of view, surely a child sleeping at your house for them is reassuring and for them is part of the day-to-day routine. They get up and who do they see? That parent. It is all about being involved. Most of the people who I have talked to, those who are older as well, tend to say that it is about time. You do not necessarily even have to be totally involved all of the time. Kids just love the fact that you are there sometimes. But of course being part of the routine makes it even more beneficial....

“In my case, I would argue with the figure mentioned before in that five per cent go to court. I mean, 95 per cent are not successful and are not agreeable even. Many people drop their cases prior to going to court because it just takes too long. That can impact children in a massive way. In my case, I basically paid for more time...

“I would have loved to go to counselling or some sort of agreement where there is practical and realistic means with which to proceed. I did not have that.”

The third highly lucid third witness said he appeared as a “father of a wonderful 10-year-old son and as a man who carries with him all of the hopes and dreams that accompany parenthood. Sadly, my expectation of occupying a meaningful place in my son’s life has been shattered by the outcome imposed upon my son and me by the Family Court. The normal order of the court whereby a non-resident parent is afforded two days contact with their children out of every 14 offers meagre opportunities for that parent to fulfil their crucial role in ensuring that their children develop as happy, healthy and confident members of the community.

“The unique and valuable contribution of grandparents, extended family, friends and significant others also falls victim to the court’s normal order. Obviously, it is the group of people surrounding the non-resident parent of whom the children are largely deprived the benefit.

“The precedent in the Family Court that the resident parent has primacy all too often results in a situation where that parent can dominate aspects of the lives of other family members, often for base motives. Absolute power corrupts absolutely, as they say, and the Family Court seems too ready to vest almost absolute power in the hands of just one of the parents.

“In producing the outcomes that it does, the court frequently cites the need to reduce the deleterious effects of conflict upon children. Whilst not denying the

negative impact of that conflict, I believe the court is wrong-headed in its approach, because it can encourage some parents to create an environment of conflict in order to secure an outcome favourable to them. The court is thereby fuelling conflict, not lessening it, and this is the fatal flaw in its philosophy.”

He said he was desperate to have more of a role in the caring of his son and was particularly offended by this concept of a primary carer.

“I do not see that we should be put in boxes, as it were; that one parent should be encouraged to have more of the responsibility for the hands-on care of the child. That certainly is consistent with what my son has said right from a very early stage, that he craves and aches for both of us to look after him, but that has been frustrated to no end in my case.”

Repeating the complaints of countless other fathers, he said he was very critical of the Family Court counselling service which he thought was “particularly bad” in respect of the process that was used most recently in his case to produce a family report. The systemic abuse of psychiatric “evidence” by the court is endemic. “I am, I would have to say, disgusted at the way that took place. It was a very selective report that was produced. It ignored large, prominent parts of my response to the mother’s application that was brought before the court. That was pivotal in the outcome. The trial judge placed a lot of emphasis on that family report and I was very disappointed at the selective nature of that report.”

Committee member Jenny George asked what reason had been provided to him to deny him extended contact hours so could take his boy to school on Monday mornings after having moved to be closer to his son. “On the face of it, I would think that is a terrible thing for the Family Court to do in terms of the principles they are supposed to operate under,” Ms George said. “I was staggered,” the father replied.

He also relayed his negative experiences with community legal centres, where he said the women had been more interested in talking him out of taking out a contravention order on his ex-wife rather than listening to him or helping.

Then came the community segment where witnesses were encouraged to put their case in a brief three minutes.

First cab off the rank was a family law barrister and mother of three Anna who seemed at odds with the idea of rebuttable joint custody, but at the same time was involved in a shared parenting arrangement herself. “We do have equal time,” she said. “But the basis of our shared parenting befits the nature of our jobs. I am able to work very hard in the week I do not have the children and then devote my sharing and parenting role to the children to a very high degree in the weeks that I do have them. Not many jobs allow you to do that. Things have got to be considered in relation to the practicalities of shared residence.

“I have a certain socioeconomic status. My children have two sets of school uniforms and two sets of casual clothes. We do not have the trauma of packing up the car with everyone’s bags. The changeover for my children is extremely clean cut... It is about going to ‘our other home’”

Another woman Kerry, who had been a family law solicitor for 15 years, said she understood the frustrations of many people in the court system and , and had “long felt that it is very unfair, particularly to fathers of children, and I have represented both men and women in the Family Court and the Federal Magistrates Service.”

While she raised doubts about rebuttable joint custody she was in a position “where my husband is the primary carer of our five year old and four-month-old baby. When things have been rough in my marriage, I have been more than aware of the situation that I have put myself into as far as I would hate to be in a situation where I was reduced to seeing my children two days out of 14 because I have taken that responsibility for financially supporting my family. My husband can parent just as well as I can, if not better. Hopefully we will not ever separate, but I am sure that if we do we would work something out where I spend as much time with my children as I do now and it would not be two days a fortnight.”

Representative of the many people who were dissatisfied with the operations of the Family Court and the Child Support Agency, Barry said the present presumption was the fathers would get every second weekend and described himself as “a typical example of how the system has been operating for far too long. Personally I have witnessed and resemble what this process creates for families involved and the community in general. The children, in particular young boys — and it is well documented — are not getting sufficient male role modelling or bonding whether from the father or even the father’s extended family such as uncles, grandparents, cousins and other long-term male role models. How can these brief periods of contact adequately establish and maintain important relationships?”

Max, the father of three children, one of whom subsequently died, told the inquiry that at the time of separation his solicitor had told him: “Don’t go to the Family Court because you won’t get custody of your children. It’s just a waste of time.’ Thankfully I had a truthful solicitor for a change. He said, ‘It’ll cost you about \$10,000 to \$30,000 to go to the Family Court but you won’t get custody so don’t bother about it.’ I thought that that could not be right and I then attended a Family Court counsellor who basically told me exactly the same thing—it is virtually impossible for a man to get custody of his children... I believe that had we had shared custody in the first place things would have been much easier for us.”

He also raised concerns over the way domestic violence issues were being discussed, saying: “Is this just an avenue to get custody of the children?”

Another father, Graham, said he was just one of the thousands, maybe millions, who had been negatively impacted. “I feel that the present presumption in law is a horrible case and it does not help the children. “Ask a child and a child will say, ‘Half with you; half with mum.’ I always had a positive view of the legal system. I thought it was about safety. These days I am extremely disillusioned by it. All my ex-wife had to do was just resist and throw a few stories into an affidavit. I am still scratching my head a few years down the track as to why my children just cannot have quality time—just a shared time, for me to be a father. We seem to negate the whole purpose of fatherhood. People do not seem to know what a father is today, what the role of a father is... How did we get ourselves into this rotten mess in the first place?”

Another father, and another supported of shared custody, Greg, said he had just spent the previous year in litigation in the Federal Magistrates Court over his five year old son, which he had found very expensive and frustrating. “The welfare report strongly supported my application and heavily criticised the mother. We went to court on that. It was in Geelong with the Federal Magistrates Court. They only come down four times a year and sit for one week. The system is very clogged up. It took me a year to get to court. In the end, just back at the beginning of August, they had 100 cases listed for a week. So we asked the magistrate to give us her thoughts on the case, like a preamble so we can negotiate. Because with 100 cases listed there was little chance of us getting to court again. The magistrate, after reading the welfare report which strongly supported my case, said that, no, it would be too disruptive to the child to pick him up on a Thursday night and take him back on a Monday morning. So we ended up with a compromise... I cannot see any reason why I cannot spend more time with my son rather than him being in family day care. We live only half an hour apart. All the allegations she made in her affidavits were disproved... I have come to the end of my tether. I do not know where to turn next to obtain more time with my son.”

With the government industry, with all its solicitors, judges, bureaucrats, academics and domestic violence propagandists giving evidence to the inquiry, all opposed to joint custody, it was the individual tales of devastated fathers which helped balance the equation.

Christos, a single dad, said: “There are no winners here. When things go wrong between two people and there is a child involved, there are no winners, and the Family Court cannot help us. The rebuttable joint custody idea I think is a good one because it will take away the slanderous affidavits that so-called once lovers throw at each other. They are mostly lies and hurt the kid — the one we both should really focus on. I do not think we can be helped here. I went through the odyssey — like the rest of us. I urge everybody to be kind to each other for that child’s sake. The Family Court cannot help you.”

A woman known only as Individual A, said she believed the Family Court, Centrelink and child support needed a major overhaul and she sympathised with the fathers who had spoken because “what happened to them happened to me only I am female.”

She said she had been fighting in Family Court is that I have lost custody of my children. She was particularly upset that she was ordered not to take her children to the doctor except in an emergency, an order commonly made against fathers. "The joke is that I am living in a country where we are creating a very poor society with poor relationships with our children. They need their mother and they need their father."

It was tales such as this, the same tales these same politicians had heard in their own electoral offices, which had led them to look seriously at gutting the child custody functions of the Family Court. With the cumulative weight of exactly these stories, that was leading inexorably to the conclusion that the Family Court could not be allowed to continue to devastate the lives of parents and children alike.

A second wife and stepmother Jackie spoke movingly of her situation and how it impacted on her and the children. She said the Family Court needed to realise that 50/50 could work and that men "just become resigned to the fact that that is the way that the courts are, that is the way life is and there is not much else they are going to get."

There were other contributions; for and against. Many raised issues of child support. Already there had been a kaleidoscope of issues and emotions. And this was just the first hearing on the first day. Many of the themes of the inquiry were already clearly in play.

The House of Representatives Family and Community Affairs Committee then travelled to Melbourne, an hour's drive away, for another public hearing that same afternoon.

It was held at the Hungarian Community Centre in Wantirna. A deliberate attempt to hold the hearings in working class areas was begun here.

Once again the Committee heard from three organisations, the Youth Affairs Council of Victoria, Australian Family Support Services Association and Australians Against Child Abuse, along with two individuals and an hour of community statements.

Chairwoman Kay Hull repeated her preamble and added:

"The public hearings the committee is undertaking are focused on regional locations rather than just capital cities. At these regional hearings the focus will be on hearing from individuals and locally based organisations. Later in the inquiry we will hear from the larger organisations such as the family law court and Child Support Agency, in Canberra or via videoconferencing."

Both Ms Georgie Ferrari, Executive Officer and Ms Paula Grogan, Policy Officer spoke on behalf of Youth Affairs Council of Victoria

The Youth Affairs Council is the peak body for youth issues across the state of Victoria. We have a membership of over 270 individuals and organisations. We represent the views of young people and people who work with young people.

Ms Grogan said: While we certainly believe that it is preferable for all children and young people to have frequent and positive contact with both parents after separation if that is appropriate, we do recognise that that is sometimes very difficult, given the often acrimonious situations that arise from relationship breakdowns. For this reason we do not support the presumption of joint residence. Such a presumption we believe offers a simplistic one size fits all model, and you certainly cannot impose a one size fits all model on the difficult relationship issues that we are talking about here today...”

The group got a good grilling from Committee member Cameron Thompson; witness the following string of questions: “You are the Youth Affairs Council of Victoria and you are talking about what is in the best interest of the child. What numbers and what proportion of children are telling you that they do not want to spend 50 per cent of the time with either parent? You are the Youth Affairs Council. How important is this issue to children? I am putting to you that if it is that important shouldn't you be able to tell us more emphatically just what children themselves are thinking? Shouldn't it be part of your responsibility to tap into that?”

They were not having an easy time of it.

Committee Member Dutton weighed in: “I understood your evidence to say, at least in part, that we do not need a rebuttable presumption because already in the act we speak about shared parenting, and that is one of the desires; therefore, we do not need the presumption that we are speaking about.

“For whatever reason, that part of the act is not working, either because of the costs of court or people saying, ‘I'm fed up with this process and I'm opting out’ — and I suspect that they are a large proportion of the 95 per cent that we were speaking about before. We are saying that, even though it is there in legislation, we acknowledge it is there and you have said that it is there as part of your evidence, it is not coming through in some of the outcomes or the decisions that the court makes.”

Next up was Mr Joseph Tucci, Chief Executive Officer for Australians Against Child Abuse. This led to the following exchanges:

“Mr Price: With regard to your earlier comments about the Family Court, isn't it a disgrace that it takes so long in the court to get those cases heard? Without wanting to lead you, isn't it the case that at your level both in the Family Court and in the departments we are spread so thinly across so many children and that we need to spend a lot more money on the severe cases?”

Mr Tucci: It is disgraceful that children in cases that involve child abuse and family violence have to wait for long periods. It is not unusual for children in those situations to wait four, five or six months, in our experience.”

and

“Mr Price: I take issue with one aspect of your submission. You say that a presumption of equal time focuses on parents’ rights, rather than on the best interests of the children. As a general proposition, isn’t there a presumption that children are going to benefit from both parents? Let us put aside an abusive situation. Why can’t equal time be the starting point for those considerations? It does not have to be the template with which you force all situations through, but what is wrong with that as a starting point?”

Mr Tucci: The way you have put it, there is nothing wrong with it. You want to leave aside the issue of child abuse and family violence...”

The first witness in support of shared parenting was Geoffrey Brayshaw of the Australian Family Support Services Association who said the point of his organisation was to give men, in particular, the tools to network and meet other people in similar situations and to work with them through their processes. We believe that joint parenting or shared care—whatever you want to call it these days — should be the starting point. As we have heard, there are obviously times when this is not necessarily the right way to go, but the feedback we get from fathers, grandparents and second families, in particular, is that if we start at the middle, with shared care, we can then go either way.

Mr Brayshaw argued particularly strongly against the costs of litigation in the Family Court, saying: “We heard that only five per cent of all marriage breakdowns actually go to litigation.

Well, I can tell you that 95 per cent of them would love to go to litigation. However, they do not have the spare \$30,000 in their pockets to do it — and that is both parties.”

He was also, like so many others, critical of the child support system and argued for the encouragement of flexible working hours to facilitate shared parenting and

During the community session in Melbourne that late winter day a number of women spoke strongly against a notion of rebuttable joint custody. But just like the fathers who addressed the Committee, they were almost universally unhappy with the operations of the Family Court and the Child Support Agency.

Witness Two, a single mother with a five-year-old boy, was one of the many women who would appear before the inquiry who expressed their utter frustration with “the Family Court thing”.

“It is my experience at this point in time that child custody and contact time with both parents are not handled very efficiently, not very effectively, nor truly in the child’s best interest,” she said.

“It was my belief that the Family Court was set up as a fair and economical way of settling contact issues, and this has not been my experience at all. It has been my experience that this process has been horribly expensive and that lawyers, solicitors and barristers are the only ones to gain from this process.

“I hope that separated parents can learn to replace the hatred, the accusations and the allegations with communication. This is what is missing from the system. The lawyers — the solicitors and the barristers — should not be speaking on our behalf. We need to get more mediation and, considering the number of people we are talking about, perhaps a bit of education so that we can get some good old-fashioned values back, starting with communication between the two parents no matter what the ill-feeling is. That is my hope.”

Fathers also spoke strongly in support of shared parenting and against the present system. Lindsay described himself as a deserted single working father with shared parenting that has been working for six years quite successfully with school transfer Friday nights with before and after care, which a lot of mothers avail themselves of. “That has given me the opportunity to have a great deal of input into the relationship with my daughter,” he said “A lot of sharing, caring, teaching, shepherding, listening, being an advocate when things go wrong at school, spending time together, doing activities together, sharing experiences, laughing together...”

Richard, a father of four boys, three from his first marriage and the one from his second marriage just three weeks old, began by saying he wanted to apologise if he sounded venomous. “But I have been distilled through the system and the system creates venom and it creates a lot of heartache and pain, so I do apologise if I come across strongly. I am a father who lives in a house 600 metres away from my children. I have flexible work arrangements. I was very involved in bringing up my children. When they were crying at nights, when they were sick, when they needed food, I was the one who got up and still worked a 12-hour day.

“My children have been neglected. They have been to doctors who have said, ‘I have never seen medical conditions this bad before.’ This is a mother who supposedly loves her children.

“Today’s children will be termed the stolen generation of Australia in years to come. My three boys say to me, ‘Daddy, why have I been taken away from you? You have put me in jail.’ They are in an emotional jail, these children. I have three sons—eight, 11 and 13—and they cannot understand why the system has done this to them when both their parents supposedly loved each other and were good enough at one stage to be parents.

“I am also the victim of unproven claims of physical abuse of my children. They have not been proven. I am a police-checked member of the scouting association; I take children away on scout camps. I am a Sunday school teacher. I have never ever physically abused a child. Yet every time some move is made to get more access or to change the access rules this is thrown in my face on a regular basis. Sadly, it does not only happen to me; it happens to many, many fathers—not just physical abuse allegations, but sexual abuse too.”

The hearing was adjourned at 5.04 pm. It had been a long day. It would be the first of many.

The first day’s hearings received little press coverage. But the debate was still running strong. Both The Sydney Morning Herald and The Age in Melbourne ran a feature by Bettina Arndt respectively titled “If courts won’t change custody parents should” and “After divorce, kids need both parents”.

Arndt was virtually the only mainstream Australian journalist and commentator who had been consistently supportive of fathers over many years. She had served on the previous Family Law Pathways Advisory Group, and was known to have despaired at the lack of progress from the group’s multi-million dollar Out of the Maze report. She wrote that the chance of shifting attitudes in the Family Court on these matters was slim and a better strategy “is to encourage couples to rethink their own approach to post-divorce parenting. Parents should be encouraged to start a different conversation – without ever going near the court – a conversation that might sometimes lead to shared custody or at least children maintaining close relationship with not only their fathers but other key people such as grandparents.”

She concluded that the present system resulted in distressed children, particularly young children, missing out on the comfort of attachments vital to their sense of security. “We have to find a better way,” she wrote.

THE WEIGHT OF EVIDENCE: INDIVIDUALS BEFORE THE INQUIRY

It was always going to be an emotion drenched inquiry. While the government funded domestic violence industry, along with the entire bureaucratic and judicial edifice, all united in their opposition to shared parenting, were well represented, there was also a solid body of evidence taken from fathers, grandmothers and non-custodial mothers to indicate the sweeping sense of pain and enormous private distress that existed in the community around family breakdown and separation issues. The poor reputations of the Family Court of Australia and the Child Support Agency were clearly on display. The government inquiry, the most publicly open and comprehensive of the many inquiries held into family law, heard numerous tales, in some ways similar in some ways very different, right across the country.

The Committee kept up a cracking pace. From the first day in Geelong and then Melbourne it travelled to Launceston in Tasmania and in the following week moved several thousand miles up the east coast, taking in Wollongong, Sydney, the Gold Coast, Brisbane and Cairns. In a second dash mid-way through the inquiry it took in Adelaide, Darwin and Perth and in the final stages of the inquiry it took in three regional locations, Wyong, Coffs Harbour and Gunnedah.

Despite the regressive nature of the final report, the committee had appeared committed to change from the beginning. In the Launceston hearing, in an exchange with the Tasmanian branch of Relationships Australia Committee Member Chris Pearce said: “We have had quite a lot of evidence, and our own practical experience demonstrates to us as members of parliament, that in fact the system is not working very well overall. It is quite clear, in my experience anyway, that we need to make some significant changes.”

Committee Member Harry Quick chimed in:

“We are hearing from the fathers. We are hearing from the mothers. We are hearing from Relationships Australia. I want to see the judges come before us so we can ask them some really important questions because they are, in my mind, one of the contributors to this stupid foul-up.”

To which Witness One responded:

“From my point of view, I will hold you to that because time is running out with my children. They are growing up and I would like to spend quality time with them, so I will hold you to that.”

The emotional swings and roundabouts of the inquiry were also there from the beginning.

Ian Hickman from the Tasmanian Men's Health and Wellbeing Association was particularly intense:

"On my way up here today from Hobart, I was just overcome by the emotion of the whole thing. I was thinking, 'I want to say this. I want to tell them that story.' I want them to feel the pain of the children, and of the fathers and the mothers too. My contact has been mostly with the fathers. I want them to know that this is an issue right now. No more research. The research is out there. This is an issue right now that needs to be dealt with before we lose too many lives or wreck too many more lives because too many people have already gone under."

Chairwoman Kay Hull concluded that part of the morning with the words: "We really do understand that it is a very difficult and emotional issue..." There would be more tears.

The first main individual witness in Tasmania, a school teacher, was cogent in his condemnation of the system:

"Even though the law of this nation allows and permits males through the law—men who have the capacity, I might add, to care equally as well as mothers—to have dual custody rights, a judge or magistrate in the Family Court, if this decision has to be made by such a person, will not allow dual custody to be a reality for fathers. If you are part of that five per cent, you often come away badly. But that is unless the father can afford the most expensive lawyer or can prove beyond a shadow of a doubt and then some that the mother is an unfit person. This second option only helps to undermine future mother-father and family relationships.

"The adversarial nature of the Family Court is the wrong way to settle such personal disputes. This common knowledge is not just privy to this room. All separated mothers, greedy lawyers, Family Court registrars and Family Court counsellors are also aware of it, thus forcing less well off separating fathers to settle for far less contact than what they or their children would have wished. After being a teacher in a low socioeconomic area high school, I can definitely attest to witnessing the problems that teenagers of separated families have. This is especially evident for boys, who suffer from a lack of contact or regular contact with their fathers."

He said of changes ordered in his case by the Family Court: "I cannot tell you the distress it caused to our situation. I could not—you know how I feel, so you can see that.

This caused considerable emotional distress to them, and the adversarial nature of the court caused irreparable damage to myself and the boys' mother. We are three years hence and it still exists. The conclusion I came up with as a citizen, a father, a businessman, a teacher, is that I am expected to have and demonstrate an equitable moral point of view to participate in the modern world and especially within Australia. I am just asking this committee to recommend to the federal parliament that this equity point of view be

legislated into the Family Court structure. As a male, I feel that I am not equal. In the words of my sons, 'Dad, we want to see you and mum fairly.' "

A clearly moved Julia Irwin said: "I hope that there can be changes made and I am sure when your beautiful boys grow up and you keep a copy of this Hansard, you can say to them, 'Well, kids, I tried to make a difference.'"

Kay Hull wound up by saying it was a difficult hearing for the committee because each and every one of them had a role as a parent and as a grandparent. "I think the issues we are confronting are daunting and difficult, and a lot of times it is not made easier by the very difficult circumstances that we hear people are in."

The next witness was as equally strong, intelligent and articulate.

She spoke from the perspective of having been the spouse of a weekend contact father for the past five and a half years. In her submission, which related to both the Family Court and the Child Support Agency, she said she talked of the huge financial burden imposed on parents who use the Family Court system.

"In our case, we had no choice but to either give up on contact or fight through the court. Costs and the long delays, which also add to costs, mean the current system of resolving disputes over custody or contact between parents is not proving effective and nor is it available to those people disadvantaged financially or socially...that the current system is inequitable in its treatment of fathers' custody rights and that the court system creates further animosity between parents where they cannot agree by making parents adversarial rather than encouraging negotiation and mediation from the outset...

"If I had not agreed to assist him to pay the legal fees and assist with providing for his child he would not even be able to have contact now. Legal Aid was not a possibility as means tests factored my wage into the equation. Our first bill for initial contact arrangements from 1999 to 2001 we have only just paid off, at the rate of \$100 a fortnight. I raised the issue of the huge financial burden this has placed on us. We are about to receive a bill for the period going forward from 2001. I encouraged my husband to pursue, perhaps naively at the time, what I saw as his right and his child's right to have a relationship going down the track. At the time I encouraged him I had no idea of the effect this would have on our ability to have a different sort of lifestyle or even to consider a child within our own marriage.

"For many people who do not have this financial or emotional support, to even contemplate court is not an option due to the prohibitive costs. The Child Support Agency does not factor in legal fees as a valid cost associated with contact in its current formulas, and this is a further deterrent for parents choosing the Family Court route."

She said gender inequality was evident in the system and for any father to get beyond the standard contact arrangements to a dual parenting situation

required costly litigation for fathers “to prove themselves worthy or, worse, the mothers need to be proved unworthy, causing parents to come into further conflict over the issue of custody contact, rather than there being an expectation of continued dual parenting of the child or children beyond divorce.”

Her submission also gave extensive details of the poor administrative processes, errors and poor computer systems of the Child Support Agency, with long delays in getting action, which she said in her case had created confusion and immense distress.

She called for reforms to address these imbalances and to ensure all the structures — the Child Support Agency, the Family Court and all the support mechanisms — were in line with current community values and norms.

Hers was important evidence because it demonstrated that many women, often highly articulate in their denunciations, were extremely upset with the operations of the Family Court and Child Support Agency.

Committee member Jenny George said that as a feminist herself she was interested in how the system was promoting the model of the primary care giver as a stay at home mum. To which “Witness Two” replied:

”Certainly in our case the presumption all the way through, both in the courts and with the Child Support Agency, has been of the mother as the primary caregiver at home. The reality was that my husband’s former wife worked and she earned a lot more money than my husband — three times his salary. That just did not fit into any of the equations where the CSA was coming from and where the court was coming from.”

First of the community witnesses, confined to three minutes each, was an impassioned father Justin who told the committee he believed every parent had the obligation to care for their children 50% of the time, as they were 50% parents, which fitted in with what “you guys” were proposing. He said: “I do not believe that any legal process is needed, unless there is molestation and everything else going on. Why do we need lawyers to figure out the shared proportion of a parent’s obligation to care for the child? For me, child support is a punishment on a parent.”

Many grandparents across the country spoke passionately to the inquiry. Thus the quip: it’s a brave government that ignores the grannies of Australia!

In Launceston Maria said: “I have a question. We have been everywhere, to lawyers and all, trying to get some kind of legal advice on behalf of the grandchild. The girl ran off with him two years ago. We have not seen him since. My son cannot get any help. I do not know who to turn to. We do not know where to turn to. Nobody really gives us any advice. How can we get in contact with him? My son is paying the child support, but he does not know if his son is alive or dead. I really do not know what to do about it.”

The previous day in Melbourne a string of grandmothers had also given evidence, already establishing one of the significant themes of the inquiry.

Grandmother and member of Grans Victoria Margaret Moder had said:

“I can see where grandparents and other family members could be a part of helping this new system to work. We could be there as a backup to both parents. As somebody pointed out, there are four grandparents in most cases. We would like to be able to see this system work. I think it would work in being more equitable in the costs involved in rearing children. I think it would reduce a lot of the costs and the need for government personnel to police infrastructures like the CSA to try and retrieve money. I think it would reduce the waiting list times for family law court hearings, because parents would then have to accept the responsibility of the care of their children. That covers all aspects of their care.”

She was followed by another grandmother, Ann, who had two divorced children, including a son who rarely even got to see his kid on Fathers Day. “Children in marriage and partnerships are the emotional and financial responsibility of both parents. Both parents should have joint input into their children’s lives. Both parents are responsible for their children’s care, wellbeing, education, health and upbringing. Both parents have the need and emotion to give their love, affection and time to their children. Children need this love, affection, contact, discipline and time from each parent equally. If joint parenting was mandatory at divorce or separation, in most cases all these needs would be met and a huge disruption in lives, as experienced in the current family law custody orders, would hopefully be minimal.”

The following week in Cairns, thousands of miles to the north, another grandmother, known only as Witness 3, said:

“We have a grandson who is 3½ years old. We love him dearly and he loves us, but we are not allowed by the mother to see him, speak to him on the phone or have any contact with him whatsoever. Up until eight months ago we played a very big role in this little boy’s life, even up to the point where the mother left him in our care for five days while she went on a trip to Bali. Then one day the mother decided she had had enough of the lifestyle she was living in Cairns and took our grandson away...

“He was taken away from his father—our son. It has taken our son six months to access some rights through the legal system to enable him to see his son. But these rights do not make any allowances for us, as grandparents, to see our grandson. It is quite the contrary. If the mother knew that we were seeing our grandson at the times that his father had access, she would undoubtedly put greater restrictions on the father’s access.”

Another heartbroken grandmother in Cairns told the story of her son:

“Last month he had occasion to take the truck down to Gympie with some horses for somebody that we had sold them to and he was to have two days

of access. He had not had access since January or February because of the hospitalisation of the child. In the agreement that they have stamped by the court he cannot have him a month either side of major surgery, so he had not had any access. But there is no catch-up mechanism in that for him to make up for the access he lost in the first six months of the year and he begged her for a second

lot of two days, giving the child two days rest in between, and she refused. She said if he kept pestering her she would bring a domestic violence order against him.”

In Darwin, midway through the inquiry, a grandfather said:

“First of all let me say that, while most people seem to think the Family Court functions very well, it does not function at all. Firstly, people tell lies and, while the magistrate says such things as ‘If the wife is proven to be telling lies, she will be severely punished’, the wife can be proven to be telling lies but there seems to be no punishment for perjury.

“They say to us, ‘We would like mummy and daddy back together.’ This is not practical, but they would like to see more of daddy.”

Weeks later, at Coffs Harbour, Bev, co-founder of a group called Grandparents in Distress at Grafton, said it had been founded “after we realised that we were not alone in our anguish over our grandchildren being separated from us and from one of their parents, usually the father—our sons. We felt we were powerless to make changes unless we formed a group...

“We found that we were just part of a system where members of a family had lost their rights and that lawyers, psychologists and the court had taken over the role, causing suffering, hardship, dismay and suicide. We found that mothers now had all the rights and fathers had none until such time as the court decided otherwise, that in most cases the fathers had been pushed aside as being irrelevant and unworthy of fathering their children and that it could cost thousands of dollars to prove their worthiness to be included in the child’s life.”

“The child support system was enough to cause the non-custodial parent to sometimes live in desperate poverty. We found that the word ‘violence’ had been twisted to mean even an angry word. After much anguish and research, we found that we were fighting a powerful and secret government authority that had been instigated in the days of the federal Labor government and had not been changed in the days of the coalition.”

She said many grandparents would not speak out for fear of creating further problems.

“As you will have gathered by now, this is a worldwide problem in Western societies and so it is no use trying to correct the problem unless we know how it started, who the actual enemy is and why it continues to this day,” she concluded. “Unless we realise that it is part of social engineering, based on the socialist-communist manifesto to destroy the family unit and religion, we are wasting our time and will bring even further anguish and sorrow upon our society.”

The evidence of non-custodial parents was also often gut wrenching.

Back in Launceston, where the tapestry of pain first began to take on force, one father, Brett, said:

“Only recently my little boy came up to me and he said, ‘Dad, why didn’t you ever want me?’ I said, ‘What do you mean?’ He said, ‘I’ve always wanted to come and spend more time with you than every second weekend.’ I said, ‘That’s true, and I wanted to spend more time with you.’ He said, ‘But now I think it’s just good to leave it the way it is.’ I said, ‘Why do you think it’s good to leave it the way it is?’ He said, ‘Because mummy showed me some court orders with your signature on it to say that you never wanted me.’”

A non-custodial mother Jo, amongst the first of a number of powerful speeches by non-custodial mothers, told the committee she let her son’s father acquire full custody to allow him a stable life and to avoid bickering, arguing and fighting. She said of the father: “He has avoided any sort of allowance for me to have contact with him over the years. At every stage he has travelled the country extensively with our child and created for himself a status quo that will allow him to be able to continue to do this throughout the course of our child’s adolescent life. Currently I have to somehow find the funds just to correct the wrongs. The injustice is that he has 100 per cent custody. My child is now 12 years old. Again, as one other person said, he believes that I abandoned him.”

Before spending the afternoon taking in camera evidence the Chair Kay Hull thanked the audience and witnesses and described the morning as “an awakening”.

“Certainly every day we hear further and further evidence which means that we can perhaps look to having a bipartisan outcome that perhaps can make the position better for the children and for the adults in the children’s lives,” she said.

With a short break for the weekend the committee resumed again on Monday morning in the traditionally industrial city of Wollongong south of Sydney, committee member Jenny George’s seat. In the afternoon they were to travel to Blacktown in Western Sydney, another working class area.

Once again it was the community statements which provided some of the strongest evidence to the inquiry of the dysfunctional nature of the system and its destructive impacts on people’s lives.

One father, Stephen, reported: “I came to a conclusion with my ex-wife only after we lost a house in legal costs fighting it in the Family Court and then, after four years, they decided to start back at square one and we were both broke. Then we had a mediation session and we sorted it out. I now am a non-custodial parent under the family court act and under the decision of that court, but I am a shared parent: I have two children; my ex-wife has two

children. We have alternative weekends. And this was sorted out after we lost everything, after we sat down. I was not the one - my ex was told by her lawyer she would get everything. So for four years I fought her to prove that she was not going to get everything. That was between us. Our children suffered. Now our children are better adjusted."

Another father Dennis described the CSA as "harsh and unfair" while John said: "There is a financial inducement because of the amount of support that I have to pay which prevents me from seeing my son on some occasions. I find it absolutely abhorrent that the system is set up in such a way that it can be used to prevent fathers from being able to have contact with their children."

In something of a rarity one father Robert didn't use up his full three minutes. All he said was: "I would like to spend more time with my daughter. Meanwhile, she is stuck in day care because the mother is worried about her pension being reduced and her family payments being reduced. To go through all this she has wasted taxpayers' money through legal aid and day care."

One separated mother Barbara, whose ex was a Qantas pilot with an irregular routine, spoke strongly in support of the shared arrangement they had evolved, saying children were very adaptable.

Shelley, who was engaged to a father who pays child support, said they had been in court for a year and a half and spent \$30,000 on court and legal fees. She said the process was drawn out and expensive. "Without the presumption of shared parenting, there is the presumption that both parents are not equally important and not equally capable, which I think is not fair," she said.

The hearing in Wollongong ended with Andrew Thompson, secretary of the Non Custodial Parents Party, saying: "Please, it is very important for our children that we do something about the system. In relation to lawyers, it is a disgrace. Why do we spend \$120 million per annum on the Family Court?"

"Why do we spend millions of dollars on the Child Support Agency when they do not do their job? I am sure you know that they are not efficient. I have had my wages garnisheed and I have had my tax return taken from me. I have a second family now with three children under eight years of age so I know what it is like from both sides. I have not seen my first two children for the last nine years. My oldest boy is 21 and my daughter is 14 and I do not even know what they look like.

"I have done nothing wrong. I have got no criminal convictions whatsoever. I was led astray by my own solicitor and barrister. I took them on as well. You have got lawyers investigating lawyers. You have got barristers investigating barristers. It is an absolute joke. I lost \$50,000 to \$60,000 of money which I did not have. I had to get a mortgage to pay for it. I lost my property outright at the court hearing. I was told to pay for her costs as well. I have done nothing wrong. I am just here for justice for all of us, and we have to do something. Please do something."

To which Kay Hull, in closing, responded: “This is a hugely emotional issue, not just for yourselves but actually for the committee members as well. We are hearing some significantly difficult issues that we need to come to terms with and be able to understand completely so that we can, hopefully, put forth recommendations that will try and redress the problems that are out there at the moment.”

By 3pm the committee was once again facing a crowded room, this time at the Blacktown civic centre deep in Sydney’s west; once again a working class area where the problems of family law and child support impacted significantly on people’s lives.

The first of the individual witnesses was an aboriginal woman who spoke about domestic violence and read the committee a poem: “If a child lives with acceptance and friendship, He learns to find love in the world.”

Witness Two, a registered nurse, argued for mediation and said: “Sometimes ordinary people can strive to do extraordinary things.”

Witness Three was a psychologist and researcher at the University of Western Sydney with an academic interest in the area. He said his own shared parenting arrangement had worked well for his children but he was concerned about the lack of shared parenting in Australia, given the social changes of the past 30 years.

He said his own ex partner, also a psychologist, only agreed to a trial run of shared parenting 12 years ago because he was threatening to drag the matter through the courts.

“At the end of that year she was satisfied that it was good for her, too. She was also interested in her career. That was one of the things, during that year, which really helped her to realise, ‘Hey, wait a minute. I’ve got some freedom. I can look after my career interests now, too. I don’t have to try to juggle everything. I’ve got someone I can call on if I am sick, when I have special times or when I have to go to meetings.’ All those things became clear for her in that intervening year of the trial and at the end of that year she said, ‘Fine.’ He said if separating couples were obliged to enter shared parenting trials for a year “a lot of them would realise that it is not only for the benefit of their children but for their own benefit to do that.”

“The experience of fathering for me has been very powerful in my life,” he said. “If I had been deprived of that experience it would have been a terrible loss. I only know about it because I have been through it. I would never have known about it otherwise. Looking back, 12 years ago, if I had gone to the Family Court I would have lost. I would not have had my kids; that is very clear. I know too many dads—and they were good dads—who did end up in the Family Court and did lose; they lost the opportunity to have the sort of input into their children’s lives that I was lucky enough to have.”

Fathers were particularly strongly represented among the community witnesses at Blacktown. These parts of the hearings were inevitably intense.

One father, Ryan, said he was the primary carer of his daughter before she was abducted to the United States by her mother more than two years ago and pleaded with the committee to introduce not just a rebuttable presumption of joint custody but to ensure that such abductions could not take place. “I have slept little since my daughter’s abduction. I have not been to bed since, waiting every night for the phone to ring. I do not know anything about my daughter. I do not know whether she is well. I do not even know what she looks like. I spent over two years fighting to get this matter into the Family Court of Australia, whilst my now ex-wife is allowed to frustrate the process. The Hague Convention does not work.”

A Dr Monaem, who had two daughters aged ten six years old who strongly supported joint custody, said as a Muslim man and an ethnic person he was fearful of the court system. He said since his wife left three months previously he had been allowed to see the children only a couple of hours a week.

”My problem is, as an ethnic father, should I go to the court? As I have heard from so many people around here, I am very sceptical about family courts—whether I can get a proper hearing. Coming from an ethnic background and also as a Muslim person, I am more sceptical. In a way, I am very scared of the current political situation: how will my case be heard in the court? I understand from various sources that my wife is preparing something for court so that I can be demonised as a bad Muslim, as a violent Muslim man. That really scares me to go to the court. Before the separation, I calculated that I spent about 60 per cent of the kids’ time going to the school, piano lessons, swimming lessons—all of this—but now I can only see them for a few hours a week.”

One divorced father, Mr B, condemned the court as an adversarial environment without “the best interests of the children at heart” while another from the Lone Fathers Association in Newcastle said he went through “a very nasty, savage and brutal hearing” to get access to his three daughters aged eight, six and four. He said after a spate of false accusations he had not seen them he had not seen them for two years, “so the four-year-old will not remember me.”

Another father, Robert, said his strong attachment to his children was ignored by the court. “I found that the words ‘the best interests of the children’ were mentioned in nearly every single page in my hearing, whereas nothing whatsoever in the hearing was to do with the best interests of my children.”

Not for the first time, and certainly not the last, one of the most powerful speakers was a grandmother Rhonda, who’s son, a high profile advocate of joint custody, had, during the course of the inquiry, just had an extremely negative judgement in the Family Court, losing the shared parenting arrangement that had been in place for three years. The government had

done nothing to protect the children and parents from the institutions they were criticising.

She said after her two grandchildren had been abducted into a cult by their mother it had taken a great deal of money and effort to try and get some normality for the two children involved, costing more than \$50,000 to get a shared parenting arrangement in place.

“I had to sell my house as my son could not afford litigation,” she said. “This resulted in a shared parenting order for my grandchildren, which was working well for the children for about three years. Unhappy with lack of control of the children and her ex partner— my son—the mother filed a further application for sole residency. At the directions hearing my son was refused to allow bringing evidence of the mother’s previous conduct of abducting the children and her involvement in the cult. Subsequently the court went ahead with no evidence of material harm to the children by the current shared care arrangement.

“The Family Court subsequently sided with the mother and criticised my son for his desire to stay at home and parent his children. All evidence brought by my son was completely ignored, notwithstanding the children were thriving under the current arrangement.

“Last Friday the Family Court in Adelaide took the children from my son and they have now exposed my grandchildren to further psychological and emotional harm by disrupting a well-established, equal and fair residential arrangement.

“The Family Court takes little or no consideration of the permanent harm caused to children by having their relationship with one of their parents terminated. The Family Court has demonstrated, in my son’s case, its absolute opposition to shared parenting.”

The hearings adjourned at 6.25 pm. It had been another long day.

The next day the Illawara Mercury carried the story on page eight with the headline “Parents plea for custody fairness”.

The paper quoted Committee Chair Kay Hull as saying: “Primarily what we’re seeing is a cross-section of issues – dads who are paying child support and who don’t appear to be getting contact with their children, and mums who are in the same position. There is strong concern that the cost of family law and the cost of fighting for your rights is just so almost insurmountable that they don’t have a choice.”

The Daily Telegraph also reported Hull saying they wanted to remove the law and adversarial focus from the process as much as possible. She floated the idea of children having their own legal representation. The idea ignored the very poor if not appalling reputation of those already practising this craft.

By Thursday morning the committee was in Robina on the Gold Coast; later the same day they would travel to the Brisbane suburb of Keperra.

Witness One, a divorced father of two, said the whole point about 50-50 contact is that it is fair: “It is fair for the father, the mother, the children and the extended family. The public—those who are not involved in divorce or have not been touched by it—do believe that the present system is fair. Only when they enter a divorce or are touched by this do they realise how unfair the present system is. The Australian ethos is based on fair play. This is what the public expect and this is what they want.”

He said 50-50 contact would empower the father to give emotional support to the children. “It will empower him to be more financially responsible. It will also allow him to be practically involved in the day-to-day care and upbringing of the children. The education system is continually crying out for more male influence in the system. This will also encourage him to be included and valued in and throughout the schooling life of the children. This sort of parenting will also allow a balance of religious views to be imparted to the children from both the mother and father.

“The mother will also benefit from a 50-50 parenting arrangement as she will be given more time to better establish herself in the work force. She will also be allowed to share the pressures of single parenthood with the father.”

Committee member Julia Irwin stated: “For that to work you would have to be close to their schools and their sporting activities, for example.”

To which he replied:

“Bring it on. I am living here. I am staying close. I am doing everything I possibly can to be close. I am stopping promotion. I am not moving back to Sydney. I am doing everything I possibly can to be there. We want to make those decisions. We want to live close. We want to deny ourselves climbing the corporate ladder to be with our family and kids. That is what we want.

“I spent \$100,000 to get every second weekend. I could have walked in off the street, put my hand up and said, ‘I am the father,’ and I would have got every second weekend.”

Witness two, a father of four children aged 24. 14. 12 and 10 said:

“All the wake-up calls that have been given to anybody have never been taken notice of by any political party, by any committee or by anyone in the Family Court. You people have the chance to make a very fundamental statement - not for the next few years, not as an experiment. You have to look at the principle involved here, and that principle has to be enshrined so that it will stand the test of time, forever.

“The Family Court, with respect, have failed in their application of the act of the seventies. There is no performance criterion that can be used that says they have been successful.

“They have failed and you have got to accept that. If you do not accept that, the solution that is going to come out of this will not be a good one for the future of our children. You have got to attack that legislation and ask, ‘What is right for the children?’ What is right for the children is an equal right of parenting for those kids by the mother, the father or whomever — an equal right to both of the parents for the children. How that is worked out and drafted I do not know...but I know it was not drafted properly in the first place.”

Witness Two said he had avoided the Family Court “because it was a fruitless, pointless, prescribed route”.

In response to questioning he said he believed the court should be opened up to greater public scrutiny. “You need only to go into that temple in Brisbane to see that it is not a family court — that is a shrine of intimidation. It is a venue that is not family orientated. It is not user-friendly. It is a very frightening experience to go into those so-called hallowed chambers and people are not friendly—everybody. It is not a family court. I find it to be misnamed. I agree that they have to open it up. It has to be made accountable; it has to be open and transparent.”

The committee then moved on to the Brisbane suburb of Keperra.

It was here that committee member Peter Dutton gave the clearest exposition yet of the idea of a tribunal to replace the Family Court, a window into the evolving thinking of the committee. It was an idea that once understood by the media would go on to make repeated headlines.

“One of the suggestions that has been made is that we should take this whole matter out of the Family Court, that we should exclude lawyers from the process and that we should have people speaking to each other through mediation. One of the suggestions, as I say, that has been made is that we set up a tribunal where we have, say, a three person panel that people deal with—it might be a child psychologist, somebody who is a trained mediator and somebody who might have a legal background.”

At one point the Chair asked of one of the apologists for the system: “My question is: if people legitimately believed that the odds were not stacked against them—for various reasons the perception certainly is that the odds are stacked against people in the family law courts—and they knew they did not have to go through the huge cost and the trauma of going there, don’t you think that would take some of the angst, anger and aggression out of the whole debate?”

As always, in Queensland the community statements provided some of the strongest material. One of the novelties of this inquiry was that the material was all available on the net within days:

John said: "I am here today because I feel that my role as a father has been trivialised and nebulised by the current laws and the family courts. I feel that both boys and girls need a father in their lives. From birth to the age of two, I was denied contact with my daughter by her mother. After paying to go to the family courts, they said I could have contact for four hours a week under supervision of the mother, because she was bonded with her mother. How she was supposed to bond with me if I had not seen her, I am not sure.

"For two years, I had contact with my daughter on the driveway in fine weather and in a rubbish bin enclosure when it rained. When I asked for a cuddle from my daughter she said, 'Mummy said no.'"

One working mother, Jennifer, who's ex husband did not work, had waged a long legal battle for shared care. "I was forced back to work because my husband lost his job and as I have no other way of supporting my son and myself," she said. "If I had thrown myself on the mercy of the social welfare system, my position in the family law court would have been entirely different. Working parents, whether they are mothers or fathers, are extremely disadvantaged under the current Family Law Act."

Echoing the concerns of many fathers, she said:

"No mother can establish a relationship with her child, particularly with one as young as my son, every second weekend. This would not allow me to be a mother to him, to play with him, to bath him or to have any sort of meaningful input into his life."

She said fortunately her family had provided sufficient financial support to obtain an interim order for shared care, which her husband continued to resist, and the the next round in the Family Court was expected to cost in excess of \$20,000.

"While it is clear that shared care will not work in every case, it is the best starting point to negotiate a fair and equitable outcome for children," she said. "Currently family law court mediators do not even consider shared care as an option."

The evidence simply continued to mount.

In Cairns, a week after the committee had begun its sweep up the eastern seaboard, Witness One declared:

"In my situation I worked the hours and made the money by mutual agreement and my ex-wife stayed home. When it came to the separation and the court proceedings, I was told that I had no chance of even going for custody of the children because she spent most of the time with the children. Therefore, she was most likely going to get the children. That is what happened in my case.

“If we have joint custody, I believe that this will certainly ease the pain of children upon separation. It certainly will ease the pain of the parents and grandparents. Hopefully, it might even make people try to work their marriage out a little bit better before they do separate. I believe that it will decrease any suicidal risks or suicidal thoughts that pop into people’s heads upon separation. Grandparents play a big part in the children’s lives before separation so I believe they should play a great part post separation, and that is on both sides of the family.”

Witness 4 was one of a number of concerned citizens without a personal grievance who made representation to the committee. He was expressing concern over a workmate: “I have seen what it has done to him and how it has affected his health. He is absolutely financially destitute and he is on the verge of selling his house. The Family Court does not care — it says, ‘Sell your car as well, as long as she is getting her payment’. I have seen what it is doing to his life and what a mess it is making of him. His health has suffered and he has got to the stage where he is passing blood. He is just a nervous wreck. Something has to be done. He does not know where to turn for help.”

A Mr Pearson, 26, said he was about to go to court to fight for Access to his son, “but the thing that pushes me away is that it is going to cost me thousands. I am going to send myself bankrupt in order to see my child.”

James said emotional and spiritual support were difficult for a non-residential parent to offer “when courts, agencies, society in general and ex-spouses, male or female, insist on using children as pawns in a game of revenge, which is never conducive to helping the child achieve their full potential.

“Emotional support is difficult to offer when these external influences insist on depleting the non-residential parent’s finances—and, ultimately, their esteem and chances of recovering and bettering themselves.

“Often when separation occurs, to avoid rocking the boat, non-residential parents will forgo their legal status and rights with regard to contact. Finances are often settled to their detriment, they are emotionally distraught from loss of contact with their beloved offspring and they have few avenues open to them to address the trauma and grief. The emotional issues are compounded by the insistent pressures of financial stress. Without any doubt in my mind, the ultimate twin losses are the non-residential parent’s inability to live their own life properly, prosperously and fully and the children’s lack of much-needed and desired stable emotional support from the non-residential parent.”

Another father, Mr A, described his expensive court proceedings as absolute madness and the results devastating.

“At my son’s first birthday, I would get 12 hours contact per week and, at 18 months of age, I would get 16 hours per week. In January 2004, when my son is two, he will get his first night with dad. At 2½ years of age he will get

alternate weekends with his dad and at five years of age he will spend half the school holidays with me. At no stage is shared residency implemented.

“The mother immediately swore, ‘You will never have him overnight and I will gather as much evidence as is necessary and spend every last cent to ensure that.’”

The Cairns session ended on yet another highly emotional note with a father of an eight year old girl presently in a 50/50 shared parenting situation speaking of his fears of the situation breaking down and having to go to a court he could not afford.

“To date I have spent about \$15,000. Where I am going to find the money for the rest of it, if I have to go to court, I don’t know. I don’t know if I will be able to. If I can’t find the money, I guess I will just have to walk away. The only way I can get her mother to budge is to do it through the court with the order of a judge.

“They talk about a child’s best interest. We have a little girl here, who is eight years old, who wants to see her mum and her dad. In a lot of ways it appears that no-one is really listening to what she wants. I just hope at the end of the day we end up with a system that is more workable, that makes things more equitable for all members of the family — not just one person. If you did put some sort of arbitration system in place, it could achieve more results, rather than put families through a mediation system that often does not work or through a Family Court system that no-one can afford and where the money spent could better be spent in the interests of the child.”

After a hiatus of ten days the “industry” in the form of the Attorney General’s Department, followed by the Department of Family and Community Services and the Child Support Agency, faced their first grillings at a committee room in Parliament House in the heart of the nation’s capital, a room the bureaucrats no doubt learnt to dread.

The role of these agencies in the present debacle was under intense scrutiny.

The starting time of 8.30am was indicative of a committee meant business.

Nine days later the committee was once again clocking up thousands of miles of air travel as it moved in successive days from Adelaide to Darwin to Perth.

As with other locations, some of the most powerful and damning evidence the committee took was from individuals.

In Adelaide the atmosphere was already heightened with the appearance of a bristly Elspeth McInnes from the National Council of Single Mothers and their ideological opposites, the Joint Parenting Organisation and the Shared Parenting Council of Australia. While most people were arguing for a rebuttable presumption of joint custody, McInnes was arguing for a rebuttable presumption of no contact in cases of domestic violence.

Once again, too, it was the volatile Tasmanian Labor man Harry Quick who provided some lively exchanges. In grilling yet another representative from the domestic violence industry Mr Quick commented:

“The ‘best interests of the children’ is bandied about at will.

“How do you do that in an adversarial setting where Family Court lawyers are reaping in money hand over fist and not having anything to do with the interests of the child— just their own self-interest?”

He went on to declare “This whole issue of separation, family payments and child support and the Family Court is a bit like cancer or AIDS — if it does not affect you, you do not want to know about it.”

In Darwin he compared the system to a sausage machine where “the lawyers are reaping untold wealth and there is this adversarial, dog-eat-dog situation.”

It was also hear that Quick quizzed “Witness 2” as follows:

“We hear ‘in the best interests of the child’ bandied about ad nauseam. If we got your son here and said to him, ‘How do you feel about the shared care arrangement?’ what do you think he would say?

“Witness 2—I asked him that question and he said, ‘It’s good.’ He likes it as it is and he said that—in his words—he gets to go fishing twice as much.”

It was here, too, that the notion of a tribunal was once more enunciated: “Some of us are of the view that before it gets to that, before you start spending some money, there ought to be some sort of tribunal where parenting plans are put forward and all the people involved in the children’s best interests are somehow coerced or forced to sit down and work out a parenting plan in the best interests of the children.”

It was also in Darwin, in yet another exchange with the domestic violence industry, that Chair Kay Hull quizzed a representative as to why a father that had been prepared to spend \$180,000 in the Family Court should not be allowed to share the care of his child.

To the by now familiar arguments from the industry that there would need to be good communication between the parties Hull pointed out that “the majority of individuals who have come before us who have shared care have basically no relationship — they are unable to get on with each other as individuals — but they still have a successful shared care relationship. That has been the norm in the individuals who have come before us who have shared care.”

Back in Adelaide, the torrent began with Witness One:

“At no time has the system taken into account the care I have given to my child or the relationship I have with my child... I am of the view that the current system has developed a culture where it encourages further disharmony between parties, in particular where children are involved, from lawyers who

inflame already emotional situations — I believe so that they can earn more fees—to the Family Court itself.

“All I ever wanted to know was that my child was going to have the best upbringing that she could receive and that I would play a part in it. I am of the opinion that the system fails to ensure that this happens.

“Everyone who has been involved with the Family Court or the Child Support Agency has had a painful experience. The system simply must change, as it does not work.”

Like many another, Witness 2 condemned the Child Support Agency.

“I work a lot of hours and it is very annoying on a Sunday when you know you are only getting 24c of your dollar,” he said before the following exchange between him and committee member Chris Pearce.

“Do you think that your former wife would say to you that that is too much?”
“She has said it. She laughs about it.”
“She laughs about it?”
“Yes.”

Later in the day another father, Martin, said men were killing themselves daily and if it had been women there would have been an inquiry years ago. He says the Child Support Agency “does drive you nuts.” I pay 80 per cent gross income, I pay for their sports, full doctors and medication, full rent, rego and movies, but nothing is taken into account by the CSA. All the while my ex-wife is sitting home, having a beer, watching Foxtel with her pension card with all discounted, subsidised fees.”

In Perth one of the major witnesses spoke passionately against the CSA. He seemed particularly incensed by the word “their” in the organisation’s logo “Helping Parents Manage Their Responsibilities”.

“It is only to be wondered at what sort of person works for the CSA. Everyone—all the despots in the world— needs someone to back them up in order to support their regimes. How can this exist in Australia in 2003?

“I have a stack of letters to the editor there, with people complaining about it. Everyone can read these things, including Labor politicians, but what has been done about it? Isn’t that the reason we are here, so that something is done?”

Like others, penalty payments imposed the moment a person falls behind, also incensed him.

“I have a friend in Kalgoorlie whom I spoke to just yesterday. He owes \$1,000 in penalty payments. Where do these go to? How come we cannot find out? It

seems to have little consequence that the child is not being looked after, as long as this person pays that penalty first.

Why is it that I cannot find out whether my child exists? Why is it my responsibility to find this out at my expense? Why is there no-one to turn to in this country?

In finishing up, Kay Hull asked of Witness 4: “So primarily it would be a distance factor that would prevent you from seeking to go to court to get some contact with your daughter?”

To which he replied, I am reluctant to do that. Why should you have to go to court to have access to your flesh and blood? Why should this be?

In Adelaide one child of divorce, Chantel, described the consequences of sole custody after her mother made false allegations of abuse against both her father and her paternal grandparents. As a consequence she did not see them for ten years.

She said although the accusations of abuse were proved to be false “when my mum went to court for sole custody, she still won due to the fact that she accused my father of being abusive. Little did I know that it was shown in court that my mum was the abusive one and he was just defending himself and me.

“Part of the reason the court said to my father and his family that he could not see me was because I said so, but little did they know that the reason I said the things I did was because of my mother and what was going on behind closed doors...

“For the 10 years that I was living with my mother, I do not recall one week that my mother did not pressure me into talking to her and listening to my so-called sexual abuse story.

“I have lived 10 years of hell and have been deprived of a childhood with a family that loves me — which I now know—and had to live a life full of lies and pain. If it had not been for my father keeping the papers in the hope that I would one day return, I would never have known the truth and would not have had the chance to finally be with my family. My case was also the longest Family Court case in South Australia, to my knowledge. It went for 54 days; not to mention the amount of taxpayers’ money that was spent on my case, money that could have been spent on a case based on truth rather than on a case full of lies; not to mention the money that my family spent fighting for me—money which they needed to survive.

“Once the case was over, that was it. No-one checked up whether I was okay. Nothing ever happened. I was just alone with my mum for 10 years.”

Amplifying the theme of false sexual abuse allegations, in the Adelaide community session Stephen said:

“I would like to tell you that in no way, in no arena—whether it is the Family Court or the child welfare agencies or the Youth Court—dealing with the best interests of the child, is there any way in which a person accused of any type of child abuse, particularly sex abuse, can demonstrate their innocence.

“In my case, my children were removed and my case went from the Family Court to the Youth Court, because my children were then in foster care. I had to represent myself but all other parties had their representation paid for by the state government.”

He records that on the first day of the trial “the barrister supposedly representing the children stood up and said, ‘I object to the return of any child to this man on the grounds that he’s never admitted to anything he’s been accused of.’

“I have not seen my son now for two years and I have not seen my daughter for three years.”

Other witnesses came forward. Mark said he went to jail for 42 days after false domestic violence accusations were made against him.

He said his cell mate was known as the Samurai sword killer and other inmates were laughing at him for simply being there on a domestic violence order.

“There were people in there wanting to go over and get my wife fixed up,” he said. Can you tell me how jail helped anybody in any way in that case?

“I have been the subject of several police raids. They have raided me for drugs, which they have never found; they have raided my parents’ house for drugs, which they have never found. They even raided their own police force up at Aldinga looking for drugs that they never found, all on the accusations of my ex-wife.”

He said he was charged with 37 different domestic violence orders and found guilty on two. “Those two were me writing a love letter and the other one a poem. The gist of the matter is now that I have not seen my children in 2½ years; my wife has a \$400,000 house on the esplanade at Silver Sands; she has my grandfather’s stamp collection and my stamp collection. Everything I have ever owned since I was a child, she has. She had no house, she had no car, she had nothing when we entered the relationship, yet she moved away with everything. I was left with a 1992 Honda and \$8,500 after 14 years.

“Where has the Family Court helped me in any way, shape or form as a male? It is not necessarily male against female, but I have not seen my children in those 2½ years. What about their rights to see me? They have no rights. You have a woman making up any bullshit under the sun and getting away with it. She had me locked up, with no evidence, no proof, nothing at all and I spent 42 days in Yatala. I had to spend 42 days covering my rear end. That was the most horrible thing about that place. I doubt whether any of you have ever been in that situation.”

Pauline, a grandmother who says she was falsely charged with sexual abuse of her grand-daughter, said there was no evidence to support the claim but the child had suffered enormously through repeated interviews and internal examinations while she and her husband had been targeted at work.

“There was no checking up,” she said. “There was no communication between the Family Court and the criminal courts. Hearsay evidence was taken as being true evidence.

“Hearsay evidence from the mother was quoted as being from the child. Perjury and collusion were also involved; perjury with the mother saying that I had committed these offences and collusion when friends of hers said the same thing. Witnesses were never told at the end of the trial that we were cleared by the judge in the Family Court. They still believe that we are sexual abusers. My mother and my brother have not spoken to me for 13 years, because they believe I am a sexual abuser.”

In Wyong another grandmother, Rosemary, said they had been subject to Apprehended Violence Orders being handled willy-nilly.

“Our son has had it done to him,” she said. “It is a horrible thing, isn’t it? It is a horrible thing to have put on you when it is absolutely false. She pleaded with the committee to “get to the bottom of all these matters, because there is a terrible lot of injustice. Men are just as loving as women. There are some loving men out here, and grandparents as well.”

In Perth yet another father said the current situation in the Family Court is that an allegation is almost as good as a conviction.

“Allegations are made at a very strategic point during proceedings,” he said. “It is never investigated, it is never disproved and it immediately works against. Many people, once they are issued with a restraining order, wonder: ‘What’s happened? I’ve been a responsible citizen. I’ve never been in trouble with the law. Suddenly, a restraining order presumes that I am guilty.’ “The restraining order is heard *ex parte*. The husband does not know about the proceedings until he is served with a restraining order. He is immediately judged guilty until he can prove himself innocent — if he can. It is a reversed onus of proof, and it may be three or four months before the *ex parte* restraining order is heard in court.

He said there was very high level of strategic use of restraining orders within the context of family law proceedings.

“The reason that restraining orders are so successful is that they need to alienate contact with one parent,” he said. “It bumps up the property percentage. That, to my mind, is the saddest condemnation of our family law system as it stands.”

The words corrupt, criminal and hypocritical were used to describe the family law system on a number of occasions.

One father, Dennis, said: "As far as I am concerned, based on my experiences over the years with the Family Law Act and the people involved — including politicians, certainly the police force and others — I regard it as a corrupt faggot-ridden system and it has been that way for a very long time."

In Darwin the next day a Mr Kennedy talked of the "corrupted role taken by the Family Court of Australia".

"I know of a father who had 42 per cent contact with his child after separation. They had a private agreement. The mother was sleeping over with the boyfriend and sandwiching the other child in with his children, and he did not like that. It does not sound satisfactory. One of the days of the week she was putting the kid in a creche. He went to the court to ask if he could have that extra day and the extra night.

"The federal magistrate, without argument from the other side, said, 'You're going to get the fathers package,' and he was cut back to 19 per cent. So the child spends another day and God knows how many more nights sardined in with other kids.

"To me that is absolutely corrupt. They say it in the child's best interests; that is not in the child's best interests."

He said the court, by routinely placing the child in the statistically most dangerous environment of single mother households was "corrupt and hypocritical".

In Adelaide a string of aggrieved fathers told of their disgust and horror at the present system.

Witness "Peter 1" described a common scenario of coming home to find his wife and left and taken their young children, leaving a note to say they had been taken away.

"She played hide and seek with the children for several weeks, denying me contact. I sought legal advice. Her lawyer never got back to us, prevaricated and it was only in the week before it finally got to court for an interim hearing that I was granted two hours access to my children.

"I say to the committee that the experience of having one's children taken and kept away from you and being legally unable to do anything about it is extremely distressing. I would not wish that upon anyone and I can understand why there is a high suicide rate in these situations."

Reflecting broad dissatisfaction with the court processes, he said: "When it finally got to court the system seemed to rely a lot on affidavits. It appears to me that one can write anything they like in an affidavit, sign their name to it

and it is considered to be fact. The judge or magistrate, who had supposedly read these lengthy documents, did not even know the basic details of the children's names and ages. He struggled to do some very basic calculations determining my capacity to pay child support and spousal maintenance. His opening statement to my solicitor when he was responding to my wife's offer of one night per week was,

'Well, that's a pretty reasonable offer, isn't it?'

He was left paying \$554 per week in child support plus \$60 spousal maintenance and got to keep about 20c in every dollar that he earned after tax and payments.

"I was successful in my work. I have now lost most of my possessions. I am back home, living with my family like a monk.

"My experience of the system has left me quite appalled by how it operates and I would urge you very strongly to do something to give fathers a fair go."

Roy, an RAAF officer and one of a number of servicemen and women who feel poorly served by the system.

"I have been in the system for four years. There are a lot of familiar faces here," he said. "It is a tragic venue to make acquaintances. I have paid \$80,000 over this divorce and subsequent custody issues. It is not just about the legal fees; there is so much more involved there. I pay \$900 a month for my daughter, who I never get to see because the court has allowed her to go to Canada on orders that they cannot enforce.

"I fought to keep my daughter in Australia so that we could see each other because it is beneficial for her and both parents. The judge basically said, 'You're wasting my time. You'll lose. She goes to Canada. I'm loading you with \$5,000 for the court costs because you're wasting my time,' and he would not allow me to see my daughter who was leaving the following week.

"The court system rewards the best storyteller regardless of truth or lies, as we have heard here today. I reiterate that. By lying in the court the custodial parent ensures that they are going to get financial benefits in most cases and definitely access to the child more than the non-custodial—parent.

"Clearly I have to say divorce is not a crime. There is no way in hell I should have been treated like a criminal. The punishment obviously is the loss of my daughter. Nothing I say here today is going to get my daughter back into the country, so I have no obligation to be here. I am doing this because I do not want to see anybody else suffer."

In Darwin another serviceman father, Brett, said he was paying for two children he loved dearly, one of whom was not biologically his, but his ex-wife "stops me from seeing my children at whatever opportunity she can, even telephone contact. I have my court orders here, which is the 80-20 that I am really happy with—not! So it is a bit of a farce. There are that many loopholes

in the court orders that she gets away with, and she knows that I cannot take her back to court because of the money that I am earning. I cannot do it by myself.”

Another witness, Tony 1, said he ran a children’s program in Palmerston for children between the ages of five and 15. “Particularly in Palmerston, one of the things we do during the program is ask the children, ‘What would you like to pray for?’ Week after week the children’s hands would leap up and they would almost dislocate their arms to say, ‘We want daddy back. We want daddy back.’ ”

“The problems we see in our youth come back to the family. I guarantee you that if this fifty-fifty comes in there will be a lot of happy children and they will not be saying, ‘We want daddy back,’ because they will have daddy back. That is half the problem: the children are angry, hurt and bitter inside. They know the lying that has gone on; they know who is abusing whom and they are carrying a lot of hurtful secrets in their hearts. That is what is happening, and if you can bring this fifty-fifty in, it will relieve an enormous amount of pressure in the children.”

Fathers groups, with the existence of Men’s Confraternity, Reliable Parents, Dads Landing Pad, Ozy Dads and others, had always been a strong and lively outpost of the fathers movement.

Brett, a representative of one father’s group, said the current system did not work.

“In our experience, we have found that the majority of the people that approach us come to us having approached lawyers and sought legal advice. They have been told that seeking shared parenting is a fruitless exercise. They have been told that the only way they can achieve any reasonable amount of contact with their children is to show that the other parent is somehow deficient. This is the crux of the problem with the current system. It makes the system adversarial and it makes it so that the parties must fight each other — and the problem with this is that the children are the ones that lose...”

He was also upset over the use of the man’s breadwinner status

“I think it is disastrous that the honourable sacrifice that a man makes in choosing to go out and work to provide for his partner and children can then be used against him in the event of separation so that he cannot continue to have a proper relationship with his children,” he said.

There was a string of grievances over the court processes. Also in Darwin, Kevin said: “In the time that I have been representing myself, I have noticed there are more and more men representing themselves. The women have lawyers, because they get legal aid as they do not work. The men have jobs—most of the time—or have assets, so they do not get legal aid. So we are behind the eight ball right from the start.”

Just as the internet has transformed the fatherhood debate around the world, it was clear at points in the inquiry that a number of the witnesses determined to give evidence in the community sections were well up to date with recent research and trends. Dave noted that it was soon to be the internationally promoted Equal Parents Week, dismissed the opposition to joint custody of the Family Law Practitioners Association and the Family Law Foundation as commercially based. He said:

“There are irrefutable reasons demonstrating the need for rebuttable presumption of shared parenting and a complete modernisation in family law reform. Statistical research confirms an incredibly baneful social trend for children who have a biological parent absent through separation and divorce.

“However, by far the greatest negligence of today’s Family Court is the failure to address the insidious incidents of parental alienation—a prominent and destructive form of domestic violence. The non-residential parent and their families are continually obstructed, denied and quite often ostracised from their children because of the former spouse’s selfish intention.

“I have been denied access from my only child for over 3½ years. It is because of nothing other than malicious intentions. I have found the courts not to be accessible. It is very restrictive for the greater majority of society, and it pains me each time I watch reports or read editor’s comments that take for granted that the courts will be there to resolve these issues. That is far from the truth.”

One father of two sons spoke strongly in support of shared parenting and his travails with the Child Support Agency.

“I feel that I would be better off in jail, locked away from the society which I can only view as I walk past, with my wallet never having any spare cash. Living like this I am on the edge of suicide. There is constant stress in not having enough money and not feeling or being able to start over again.

“The erosion for me of a fair society is such that while my ethics and morals do not allow me to become involved in illegal activity they are slowly being eroded as this goes on. That is my personal story and it upsets me.”

One father, who had driven hundreds of miles to be at the inquiry, said he had only achieved shared parenting by spending \$150,000.

Bruce, a divorced dad with two children seven and five years old, described the situation as a Pandora’s box and the use of the “best interests” of the child phrasing as a complete cop-out if anyone believed that was being reflected in the sorts of decisions and results that we get today. “As people, we have only two parents — a mum and a dad. Nobody will ever love us to the depths that they do, and I find it astonishing to suggest that it is in the child’s best interests to remove them from access to the love of one parent to the degree that does happens. It is such an absurd piece of logic. The thought that a

judge who will never know, never meet, never even see my children and only be aware of their existence for one day can decide that it is in my children's best interests not to see me to the degree that they do not is quite astonishing. That is myth No.1—that best interests are actually being addressed right now.”

The next month was hearing free after a bank of industry interrogations in the middle of October. But as October ended the committee took a sweep through three rural locations; Wyong, Coffs Harbour and Gunnedah. These hearings received sympathetic local media coverage, making the front page of the Coffs Harbour Advocate, and were, just as they had been a month before, emotion drenched.

There was compelling evidence from non-custodial mothers on this wing of the inquiry. At Wyong these women's voices made an odd contrast to Pru Goward's strident anti-father comments, culminating in the claim that fathers would need an auto-cue to remember the names of their children. But it was some of these non-custodial mothers that reflected very strongly the sentiments of non-custodial fathers,

Witness One at Wyong said that as a result of my children living with their father she was not able to adequately share the parenting.

“This has arisen for a number of reasons. One is the constant breaking of court orders for which I believe there is no adequate enforcement, other than my returning to court to try to represent myself. This has been a costly exercise. Over the last five to six years that I have been involved in this, it has cost me in excess of \$200,000 with the legal profession to have orders put in place, then to go back to court to get orders reinforced, only to find at the end of the day that certainly the access orders are not adhered to.

“This occurs with physical access and telephone access—for instance, on a stated day when I was to speak to my children, the fax machine was usually on. The children do not come up to visit me very often, because in our orders I should go down to the South Coast to collect them and the father should come to our area to return them. But he insists that, if the children wish to see me, they have to be placed on the train—which of course is a disincentive for them.

Her complaints against the Child Support Agency were almost exactly the same as many fathers.

“Within a week of my children moving to the South Coast, my ex-husband put in an application against me to the Child Support Agency for child support,” she recalled. “He refused to come to an agreement with me on the day of the court hearing for payment in an ongoing way. Therefore, I was left to be assessed by the Child Support Agency at a cap income because of my profession. But he had not put in his tax return for four years, so he submitted to the Child Support Agency that he was in fact earning only \$35,000 per annum. Therefore, the Child Support Agency assessed him as having no child

support income, and my child support income was assessed at the cap, which meant that I would have been paying \$36,000 after tax in that year.”

She further complained, as so many men had done, that the onus was on her, the other parent, to provide all the relevant information to the agency. “The custodial parent does not have to reply if they do not wish to, let alone provide documentary evidence,” she said.

She also spoke of the enormous distress the Family Court and its processes had caused. She said in the final judgement, the judge suggested that he would ‘give’ the father her eldest son so that he would not be seen to be a resounding loser in the case and ‘anyway the child would grow up to see through the antics of the father’.

“I am very concerned that if we have children in the sole custody of one parent, particularly at young ages, it will be extremely damaging to the relationship with the other parent. For the children, it means that for many years they are often estranged from the families of the other parent and are unable to get a good understanding and a feel.”

There were clearly issues around the psychiatrist who had recommended she relinquished custody of all of her children. “His comment was: ‘Even though I’m asking you to give these children to him, he doesn’t love them, you know.’ That was very distressing for me. He added: ‘Other than the fact that he wants to be able to say, “This my son, the doctor,” or “This is my daughter, the whatever.”’ He said: ‘He cares about them, but he doesn’t have the capacity to act in a way that is good for them.’ I think that, if you are dealing with those problems, the only way you can deal with them is to legislate. Those people are not going to have the insight.”

Chairwoman Kay Hull said they had received a lot of criticism because the inquiry was seen as being directed towards unfavourable results for particular men’s groups.

“More and more throughout this inquiry we have seen women in your position who are non-custodial parents. There is a feeling in the community that non-custodial parents are all men, not women. The fact that this is taking place more often, as you have indicated, with women as well as men is constantly within the submissions and before us. It is really not a gender issue it is about the children...”

On questioning from Kay Hull Witness One confirmed, on that Sunday late in October, that shared parenting had never at any time been encouraged by the Family Court.

“One of the greatest griefs for me is that it feels like a death. I feel like each child has died. There is no relationship because I do not know their friends, I do not know their interests, I do not know their clothes size and I do not know their latest music. The way this is occurring for the non-custodial parents at

the moment is incredibly damaging to relationships and also for the children, I might add.”

Speaking of her now 14 year old girl, she said: “Every time we see each other there is inappropriate time to educate ourselves mutually about what has happened in that intervening period. In other words, she has started to menstruate so she wanted to tell me about all these things and then tried to ask me what my experiences had been. She has looked to a girlfriend — excuse the frankness of this—to teach her how to put in tampons because her mother was not available, she was not going to ask her father and the relationship with her de facto mother is not all that great.

“There needs to be a lot more contact and a lot more legislation so that, irrespective of the agendas of either parent, for the sake of the child it happens...”

“She told me recently that her life was — excuse the expression — shit, and she said, ‘Oh well, I suppose you’re just getting on with your life, are you?’ looking to me.

“I said, ‘Darling, I miss you every day and I think of you every day.’ But because of this win-lose situation—because we are told, ‘You can have the children and you can be the accessing parent’—in my view the children are suffering.”

Witness 2, another non-custodial mother, was equally as strong and equally as powerful in her condemnation of the system. It was perhaps unfortunate that the media chose to ignore this testimony, and instead to focus on the easy copy provided by Sex Discrimination Commissioner Pru Goward.

Witness 2 told the following story of the destruction wrecked in her own life and that of her children:

“Over a 13-year period, access to my child has been continually denied me by the custodial father. Over that time, due to lack of contact, I have been unable to explain the reasons behind my absence to my child. Consequently I no longer have what could be described as a good relationship with my child, who is now 15 years of age. Over the last 13 years, every effort I have made to have those original court orders enforced has been thwarted by the very court that instigated them in the first place.

“In these years, the father has received a social security pension and remains unemployed. I am at his mercy as he uses this situation to maximise his financial status through the welfare system. As a result of his actions, I have been ordered by the court to furnish all my financial and personal details, including bank account numbers. This is not only unfair; it is also dangerous. I have not adhered to these orders as that would allow this man to have access to my personal documents. Therefore, I am liable for prosecution. Also bear in mind that this man receives legal aid at the expense of the taxpayer.

“I also have four other small children and I receive minimum wages. I am trying to keep my home business afloat to be around my family. I now have to work the graveyard shift while my children sleep as the financial burden for us is too much. On top of that, I cannot apply for legal aid and cannot afford a solicitor — I represent myself.

“I believe the Family Court system is a destructive system and is contrary to fostering good a relationship between a non-custodial parent and their child. It works to keep them apart by supporting a parent who prefers to use the child as a weapon.

“The current legal system offers no motivation for custodial parents to take some responsibilities for themselves and promotes welfare dependency with the assistance from the non-custodial parent through child support payments. How can I get on with my life when I have to face a family law system that actually promotes vindictive behaviour due to the biased way it supports the custodial parent in the quest for revenge through welfare dependency and the denial of access for the other parent? As a non-custodial mother, I believe in the child’s rights to have equal contact with both parents as well as with grandparents.”

Witness 2 also said she had also been through the Family Court system in relation to another child and another ex-partner which had made both their lives miserable until they settled on a shared care arrangement. “The Family Court officers were of no help whatsoever,” she said.

“It was not until a year or two later — when both of us grew up as adults — that we put what our child wanted first, instead of what we wanted. We now share everything. We share his life, his schooling, his grandparents.

“When he is in his father’s care, what he decides is up to him; when he is in my care, what I decide is up to me.

“We come half way between and that is only for him. We have had to do that so he could have a good life and a good future. But while we were in the Family Court system, it was horrible, especially for him. It does work but the parents have to grow up and be adults about what they want for their children — not what they want for each other—and it will work.”

Provoked by Witness 2, once again we were to witness an enunciation of the evolving thinking of the committee in the words of the Chairwoman Kay Hull:

“The reason why we have spoken at length about tribunals is that, in our observation—after listening to all the witnesses who have come before us and certainly after reading over 1,600 submissions, most of which I have read, and I am sure most of which the committee have read—it has been indicated to us that the family law process, the adversarial process, creates animosity between partners. It can break down a fairly good relationship, rather than establish a better relationship. Once solicitors become involved in the issue of contact and residency orders, it tends to deteriorate significantly.

“As you have said, you can go through a family law court process, pay squillions of dollars, not get on at all and be unable to come to an agreement, and then come to some sort of sense after a lot of pain, expense and emotional trauma. You then sit down, grow up, and do the right thing and come to an agreement about your child.”

In her interaction with Pru Goward that same day Kay Hull was providing even clear indications of the committee’s thinking:

“There are a lot of unhappy people out there. We are not just responding, as it has been put to us, to an aggrieved male audience who do not want to pay child support and who want to manipulate things. We do have a major problem: the children are unhappy because they want to see more of their individual parents; the women are unhappy because they want their children at times to be seeing more of their ex-partner; and the men are unhappy because they want to see more of their children. We have all these tools available to us. Why isn’t that happening?”

“There are people who are currently in shared parenting arrangements who are unhappy about the amount of time and the cost that it took to get there. They are unhappy with the Family Court system. There are people who have been outside the Family Court system and who have come to arrangements where they do not get on at all, they do not even speak to one other, but their shared parenting arrangement works very well because they have the interests of the children at heart. It works very well, even though they do not get on and they do not share a lot of things. We have also heard people, whether it be the female or the male non-resident, complaining that contact is denied them. They turn up to collect their children, the children are not there and the child has been told that daddy or mummy did not come. It is manipulated dreadfully.

“There has been concern and criticism about the Family Court, the adversarial process and the legal profession — that once they are involved it seems to go downhill and people move further and further apart. It is only when they leave that process that people finally come together. It is difficult not to say, ‘Why did you go down that pathway?’ ”

But while non-custodial mothers got a lot of attention during this final swing through regional areas, once again there was a string of strong of strong statements from fathers during the community statements in Wyong, Coffs Harbour and Gunnedah.

Andrew said the mother considered their child “her daughter, not our daughter. The consent order is not in our daughter’s best interest, nor is it the shared parenting I prefer. I was advised I did not have a hope in hell of getting a court order to order shared parenting by a competent solicitor and barrister who, incidentally, is now a Family Court judge. The mother makes veiled threats of obtaining an AVO when I disagree with her and she starts yelling.”

Alex, the father of one adult son and two girls aged 10 and 11, said his contact had been continuously sabotaged for eight years.

“To go to the court and show contempt of the court orders costs a fortune and is just impractical.

“I feel that it is in the best interests of the children that two parents look after them and physically spend time with them.

“I have seen today’s hearing and I have seen a lot of submissions, particularly from the people who are funded by the taxpayer. For some reason, these people just do not want to have to change any existing arrangements. They are happy with the sole parenting concept, where the father has to go away, do the work and pay and sometimes gets to see the children. I do not find that very satisfactory, and again I stress that it is not designed in the best interests of the children.

“The money which the mother receives through the Child Support Agency does not go directly to the children. More often than not it just goes to support her lifestyle rather than the children’s interests. Of course, the lawyers also have a vested interest, because they like their revenue to be maintained — not the children’s but their own revenue. During this inquiry I had a conversation with my eldest daughter, who is 11. My daughter said, ‘Hey Dad, why don’t you go and talk to Mum and agree? Why don’t we make an arrangement so we will be one month with you and one month with mum and so on, and that would continue through the year? We would go to the same school and have the same friends and the same lifestyle, but we would just avoid all that continuous uncertainty and pushing from one place to another.’

“So that is the children’s wish. And never go through the Family Court—if you go to the Family Court it will go through a very corrupt process and the outcome will be antifather and anti-children.

“Find a way to actually get feedback from actual children and hear their voices and what they think. I think most of the children would say, ‘We would like to see Mum and we would like to see Dad.’”

Gary, a non-custodial parent, said orders for access to his young Daughter had been breached some 47 times.

He said he was reluctantly about to go through the court process but was unable to get legal aid. Nor could he afford a solicitor and had to represent himself in court. “This is very unfair because the court system is very complex and affects normal people in a way that they should not be affected,” he said.

He said due to his commitments and child support payments he was living on the breadline and he felt penalised by the Child Support Agency, which he regarded as very unfair.

“I think the system in its current form encourages non-custodial parents who are overcommitted in a lot of areas to go on the dole, to be dishonest and to work for cash, which they do not pay tax on. The system in its current form is letting a lot of people down — both parents and children — and it sets the wrong example for everybody in the community.”

He said “if there was a fairer system available to everybody involved, you would find more men back in the work force, fewer people on the dole and more men facing up to their commitment of paying their child support and looking after their kids’ needs. A fairer system would make it better for everybody involved. It might even stop some of the bitterness that the courts and the child support system produce.”

A custodial father, Craig, said the Child Support Agency had made his life very difficult after his ex-wife’s visitation had gone over the 109 threshold.

“I am bringing the kids up at home, trying to keep everything going, and she is getting child support for her visitation rights. It just makes it unbelievably hard. She has got on with her life, which is good. She has a partner and is getting married to him. He has his own business and there is no shortage of money for her to live off. It is getting to the point where my mortgage and support for the kids is getting near impossible, and the Child Support Agency cannot do anything about it. I have sent them all my expenses, telling them what is left at the end of the month and they say, ‘Sorry, that is the formula. See you later.’”

The next morning, further up the east coast at Coffs Harbour, a tourist, fishing and commercial centre on the picturesque mid-north coast of NSW, saw yet another emotional roller coaster of a day begin, this time with a doctor with 20 years experience who was also a separated father with three children.

He said he had seen many people going in and out of the family law system.

“One thing is for sure: the current system is not working,” he said. “There is a lot of pain and suffering that surrounds any form of involvement in the current family law system. In fact, some of the suffering is horrendous. Children are being told they cannot ever see their father again in some cases, and men are being accused of the most horrendous crimes against their own children, purely as a part of the Family Court system. Lawyers are using these techniques to win cases. There is often a callous disregard for the welfare of the families involved, in an effort to win a case in the Family Court.

“Currently there is too much that is unknown in the family law system, and it is causing absolute chaos. I think very few people who have gone through the system are happy with it.”

He described the abuse of Apprehended Violence Orders as “horrendous”.

“Here would be a father who loves his child, used to love his wife, has never done a thing wrong in his life, who is suddenly landed with some legal criminal accusation. It is appalling. All these violence organisations and so on are

drumming it up; they have hijacked the family law system. Parents generally love their children; parents generally are good. You have got to get all these organisations away from them. That is criminal law — put it aside and leave it for the criminals. The family law is for everybody now. Parents love their children. They do not abuse their own children. It would be very rare.”

Witness 3, another non-custodial mother, said the fact that she worked while her husband did not and that she had been the one to leave the house had all been used against her. She said she lived near her 10 and 11 year old but was only allowed to see them every second weekend. She disputed the assumption that someone who worked full time could not also be the primary carer of their children. She said that as the residential parent her husband held “all the cards”.

But even she said she had no doubt a 50/50 split arrangement could work with certain provisos.

She said if she had evidence “they were not at risk, I believe that, yes, an equal residence arrangement could work. Certainly my children believe it would work. They see their friends living in shared arrangements and moving between houses, and they do not see any reason why it would not work for us.

“The other thing that astounds me is that, on the two occasions I have appeared before the deputy registrar, the children have not been mentioned. The first time I was absolutely astounded. I thought that finally somebody will ask whether my children are safe and well. All they said was, ‘You’d better get a valuation of property. You’d better get a valuation on that. What’s this amount here? Better go and look at that.’ I was just dumbfounded. I wrote a letter of complaint.”

“The person who handled it did not look at me. They had their head down. I was in there waiting for my children’s names to be mentioned and the person I was appearing before did not even make eye contact with me or with my husband.”

An exasperated chairwoman said the situation “always inflames my intestines because the Family Court process has continually indicated that all areas are always looked at for and on behalf of the children and that you go through all these processes first in looking at the parenting responsibility”; but while even the previous day taxpayer funded bodies had been declaring that no parent was disadvantaged in family law and the child’s best interests were paramount, there hadn’t been a single individual case before the inquiry where that had proved to be the case. She said she had not come across a single instance where “the Family Law Act works as it is written”.

Witness 3 said she had been assuming that once they got before a judge then the children’s interests and needs would be heard.

To which Kay Hull replied: "I am probably becoming sceptical, but do not hold your breath!"

Sadly, she described how she had to sneak around to have contact with her children and how they called her behind his back.

"I go there every day," she said. "I am allowed to sit outside the house and spend time with the children. They sneak away to see me. I take my children to doctors and dentists but, again, by subterfuge. If I ask permission, it is denied. So I am doing everything that I can to be actively involved and to influence choices."

Once again the fathers statements from the community section were very strong.

David, a separated father, said: "My children were taken from me the day my ex-wife left our marriage. Since that day, nearly three years ago, I have been fighting her and the whole system for regular contact with my children. This is a system that has armed my ex-wife with money and the children, who she uses against me as weapons and human shields.

"This is a system that makes my children cry in anguish because they cannot see me. It makes me cry in anguish because I cannot see them. This is a form of child abuse, I think, and a form of domestic violence and I think it should be seen as that. This is a system that depletes so much of my salary in child support that I literally struggle to survive. I walk around with painful teeth, I avoid medical treatment, I have to sleep in cars at times, I drive unsafe vehicles and I shop at St Vincent de Paul. There is no light at the end of this tunnel. I will be 52 years old when I finish paying child support and before I can start saving again.

"This is a system that pretends that Family Court consent orders are working. They should be called blackmail consent orders or 'sign here or I'll take you to court' orders. I signed on the dotted line knowing that it was not in the best interests of my children. I had no choice, because I had no money. This is a system that pretends there is justice in the so-called Family Court. My experience so far is that this is not a Family Court. It should be renamed 'men's and children's discrimination court'. I feel that I am teetering on the edge at times. I struggle to keep fighting."

He said any decision by the committee short of shared parenting would not help his situation.

"Please do not be misled by the fear campaign that men are a risk to children. I am here to tell you that I have been beaten numerous times by an angry woman. My child alleges that he has been physically and emotionally abused by a woman. My understanding and experience is that children are at just as much risk from their mothers as their fathers. But we never hear this.

There are already numerous services protecting children at risk out there—I have used them. As a health care worker I am mandated to screen women for domestic violence but not men. No-one is counting these abused men.”

Another father, Michael, said he had four children in his care and was still forced to pay child support for one child that was with his ex-wife, said: “We should understand that the child is brought into this world in a partnership which is 50 per cent woman, 50 per cent man. That partnership endures past the separation. To see it as a 50 per cent partnership is the correct way. To see it as one partner having to battle to get the field level before they can have a normal arrangement with their children is wrong. To be able to have normal access to your child is a human right that is not available to most, unfortunately, after a family breakdown.”

Yet another father, Matthew, said the majority of children wanted to spend time with both parents but his children had been denied that.

“I think it is ridiculous that I have not seen my children since January,” he said. “If I am lucky, I will see them again next January.

He said he had been forced to cash in his superannuation, sell furniture and disconnect his phone in order to keep up child support payments.

“I know that my children are suffering now, and that is grossly unfair on them,” he said. “I would love to have my children with me 24 hours a day, but that would not be fair on my children, because I know that they need their mother. It would also not be fair on their mother, because I would not want her to go through what I currently go through. I would not want to inflict that upon her. Please let me have 50 per cent of the time with my children. Please let me be a father to my children.”

Another woman, Harriet, said she had always been encouraged to be proud of being a woman, but “lately I have been ashamed of the behaviour of some women in Australia who are causing much unnecessary grief.”

“I, like most of my friends and family, have been oblivious to the unhappiness that is going on right in our own communities. Since I have become the partner of a divorced man with children, I have seen and felt his pain and his children’s pain when the children are kept away from their father. I have seen and heard of the manipulation of many children which stops them spending precious time with their fathers, whom they love dearly.

“I have heard many stories highlighting the same patterns of behaviour, and all I can think of is: why on earth is this happening? What can make a woman stop the children whom she loves from spending a reasonable amount of time with the other parent? Once a fortnight, if it happens, is not enough time to continue a close relationship with a child. People in jail have more time with their families than my partner does with his daughters.

“I is critical that the government urgently stops encouraging and supporting parents to separate and use their children as a means to ensure their own financial security

Fathers are capable carers—I have seen it with my own eyes—and they want to be part of the day-to-day lives of their children. If anyone bothers to listen to children, they want their fathers to be there for them.”

“This inquiry has the capacity to help the next generation of children in separated families, and it is not too late to help the current cohort of children who are suffering.

She said while feminism had produced many positive “when separation occurs, all the outdated clichés about men’s role as the main breadwinner are resurrected to justify women being able to take away everything from the marriage, including the house and the children. No wonder men in this situation have absolutely nothing to live for.

Men need representation and their rights recovered. Currently, separated men have a very poor standard of living. This inquiry has the capacity to help Australian men have a fair go. I hope that these men and their children will see positive changes in their lives soon.”

Later the same day, in the agricultural centre of Gunnedah, the inquiry was to hear from the last of the individual witnesses before the inquiry. Once again the evidence was emotional and compelling; and it was these very voices which provided more than enough evidence for the government to act.

Witness One said the announcement of the inquiry, with it being “broadcast that the government would be looking to have more husbands getting custody” halfway through her hearing made it seem “almost as though the judge was doing his bit and making sure it did not go her way.”

Chairwoman Kay Hull, by now clearly frustrated by the family law industry, said:

“I do not know that the Family Court judges take any notice of governments, let me tell you. They do not demonstrate it in some of the things that they deliver. There is a clear intent in legislation and a clear intent in law but that does not appear to be what is out there, so I would relieve your mind of that.”

With the individual contributions to the public hearings winding up in Gunnedah, fathers remained strongly represented.

Witness 3 said there was absolutely no reason why joint custody would not work in his case and in the case of many other parents in similar situations.

“My son lives three kilometres away from me. He would attend the same school, his friends would stay the same and he would live in a house that he is very familiar with. Nothing would really change in his life. I see my son every day from a distance. I pass him on the way home from school and I wave to him. His grandparents pick him up—my ex-wife’s parents. I am not allowed to

speak to him. The only time I can see him is on my allotted weekends each fortnight. I think that is extremely unfair. My son and I were always extremely close; we still are. He wants to spend more time with me.”

“I have to return him home at 5 o’clock on Sunday afternoon or all hell breaks loose. I have often said, ‘We’ll come home a little bit later. It’ll be all right,’ and he says, ‘We can’t do that; Mum will blow her head.’ So I get him home.

“He constantly emphasises to me that he wants to be with me more. He still loves his mother and he wants to be with his mum but he wants to be with his dad too.”

Wayne said:

“I am a loving and committed dad who, after separation, simply wants to share in and carry on with the upbringing, welfare and schooling of my little boy, now aged 4½. I separated in October 2001 and, from the first day of separation, the mother maintained an absolutely cruel and vindictive campaign of a zero contact regime. The mother simply deemed that no contact would be in order, and that position has been supported in the last two years that I have been involved in the Family Court. The mother filed for sole residence orders in the Family Court. After huge amounts of exchange between our solicitors, still my son did not get much contact with his father.

“Not a single shred of evidence supporting the current sole custody model has been presented to this parliamentary inquiry by the array of family law industry participants. The reason for this is simply that none exists.”

Ben said he was a recently separated father of two young children he loved dearly. “I want the opportunity to be there as a good role model to my children and a positive influence in their lives without robbing my children’s mother of the same opportunity, and to have a situation where we accept that our rights and responsibility are shared equally, where we both work together to further the interests of our children, putting aside our own differences. The reason I want this is because I genuinely believe that it is in the best interests in the long term of our children. It enables them to maintain strong relationships and bonds with both parents and overcomes the need for parents to be adversaries in court over the kids, greatly increasing the likelihood that they will remain on speaking terms.”

Rex, father of an eight year old boy, said he had been to the Family Court. “I have no contact on Christmas Day, no contact on his birthday, no contact on Father’s Day, and no contact on my birthday because the court has granted the mother discretion on those occasions...I do love my children. I want to see more of them.”

“Who has been to Family Court? It is not tennis; it is like football: the parents are the captains of the team and the child’s best interest is the football. Hopefully, when you go to Family Court, the playing field is level—you think it

is going to be. You hope that you can score a few tries that you think are worth trying for for the child; you hope the goalposts are not too far away. And, by the way, whatever you do, never argue with the ref and put on a good public show.”

There were many other voices, both in the public hearings and in the submissions, which added powerfully to the volume of evidence before the government.

Chairwoman Kay Hull, who had by this stage already admitted to the emotional strain and intensity of the inquiry, nonetheless wound up the Gunnedah hearing on that mid-Spring afternoon of 27th October 2003 by saying the public hearings had been a very valuable process.

“It is important that everybody is exposed to other people’s experiences,” she said. “I think that this is why the public hearing process is good. If you think that you are the only person with a problem or the only person who is experiencing a certain issue, you start to understand that other people are experiencing them as well. If you think that men are the only ones who experience this problem, it is also very good for you to recognise and hear that there are women who are experiencing the same problem.

“In the last 24 hours we have had people come in and say, ‘When I came in this morning I was just coming to be abusive and disruptive. I wanted to scream at you and tell you that you didn’t understand. Having sat and listened through the whole day, now I want to come up and say that, because of everything that everyone has said here today and the questions that you sometimes asked, I feel confident that you do understand.’ That lady also indicated that she had not realised that there were others in her position. Some of the gentlemen came up and said, ‘I didn’t realise that there were women non-residential parents as well. We thought it was all us blokes.’”

In the end all these witnesses were dismissed in the final report in a single sentence; suggesting they were more concerned with their own problems than their children. It was offensive, insulting and untrue. The bland dismissal of individual experiences fuelled still further the push for reform.

NICHOLSON: THE FINAL DAYS

The appearance of Chief Justice of the Family Court of Australia was classic Nicholson. He was talking to his favourite media outlets, including The Age and the ABC, virtually to the doors of the inquiry at Parliament House in Canberra. His appearance at the inquiry on the 10th October 2003 was accompanied by a spate of media stories reporting his opposition to joint custody.

On that day The Age newspaper in Melbourne ran a front page story headlined: "Family judge warns MPs on custody."

The paper suggested the Family Court would sound a strong warning against the introduction of formal joint custody arrangements between separating parents, saying it could lead to an increase in both violence and litigation.

The story quoted the Court's submission, signed by Nicholson, at length: "If separated parents are expected to share their children equally...the legislation will create a normative standard which will be unattainable in practice for many, and which may jeopardise the best interests of the child. A parent who has been living in a violent or oppressive relationship may be persuaded to 'agree' to a shared care relationship in inappropriate circumstances... Counsellors and judges are also aware that increased contact may provide some parents with opportunities to control and harass their children and former partners."

The paper also recorded that in a personal note concluding the submission Nicholson cautioned the committee to beware of the submissions made by interest groups. "The court's experience is that there are usually two sides to the story in family law matters and the situation is rarely black and white, but rather various shades of grey." The Family Court submission also suggested that the inquiry itself was creating problems. "The raised expectations which accompany inquiries and the amendment process inevitably produce a groundswell of hostility towards the court and the Parliament, because in many cases the expectations cannot be met."

Barry Williams, the founder of Lone Fathers and one of the country's most long term campaigners, was one of those family law reformers who had long had a hostile relationship with Nicholson. He told The Age he didn't think Nicholson should be allowed to give evidence. "I think it's a breach of the separation of powers," he said. "He is a judge, not a law-maker and he had made it quite clear in the past that he does not believe men to be capable of looking after their children."

But since the 1980s, nothing had ever stopped Nicholson speaking out on his numerous hobby horses.

In the year or so before the inquiry began Nicholson had created a series of stirs; one of them by calling for the removal of the common-law defence of

reasonable chastisement. He supported the call for laws banning physical punishment of children so that smacking would become "socially unacceptable". Next, he declared, after a retrial of an unrepresented woman in a case where there were accusations of domestic violence, that the lack of legal aid appeared "to infringe the practical enjoyment of rights" under international conventions. Never mind the numerous self represented men who struggled every day to get a fair hearing in the court. More debate was stirred when he suggested decision making about asylum seekers "ought to be properly understood as an aspect of family law."

And on DNA testing, an increasingly hot topic amongst men, he argued against discrete testing without court orders, saying: "I think there's a considerable element of invasion of privacy involved in one person unilaterally going off and getting a DNA test for a child."

Appointed as only the second chief justice of the Family Court of Australia, Nicholson had been in power since 1989. Approaching retirement, there were many signs he was trying to establish his legacy. With a clear eye to the future, Nicholson had overseen a string of appeal judgements in the preceding years, the impacts of which defined family law and which critics say will take legislators years to undo. The inquiry, which was examining the fundamental philosophies and practice of the court, was a threat to all that Nicholson was trying to leave behind.

In attacking the notion of joint custody Nicholson had been first cab off the ranks, claiming that joint custody or shared parenting was unworkable for most families.

Nicholson had long reigned as some kind of mystical saviour of children, fawned on by left wing journalists, feminist academics and some sections of the legal industry. The views of Nicholson often jelled with the views of the journalists interviewing him. The taxpayer funded Australian Broadcasting Commission, studiously ignoring community outrage, had displayed extraordinary sycophancy towards Nicholson throughout his career, while he has also had numerous apologists in the mainstream media. But personnel in the mainstream media were not immune to the ravages of the system. The turning of the tide of public debate was assisted by the increasing number of separated men with raw experiences of the system who were working in newspapers, radio and television.

Draconian censorship built into the Family Law Act, the notorious Section 121, which prevented the naming of litigants in a Family Court case without the consent of the Court, had also helped protect the Court and Nicholson from full journalistic scrutiny.

The currents running against Nicholson and the Family Court were ably assisted by developments internationally, where there had been a number of exposes of the ad hoc decision making of Family Courts creating "routine misery on a massive scale", to quote one UK piece. These essentially Marxist feminist courts, creations of the 1960s and 1970s, were in savage disrepute

wherever they operated. The intervention of public figures such as Sir Bob Geldof; along with public intellectuals like Dr Sanford Braver, author of *The Myths of Separated Fathers*, and author of *Father and Child Reunion* Dr Warren Farrell, who visited Australia, also helped transform the debate at a time when dissemination of information had never been easier.

The 25th anniversary celebrations for the Family Court of Australia in 2000, where Nicholson played a prominent part, garnered no positive coverage.

In recent years the persistent questioning of a recalcitrant Court by former barrister Senator Brett Mason through the Senate Estimates judicial committee had already exposed numerous issues of public concern. These included extensive delays, the low number of sitting days for many judges, including the Chief Justice, who sat around 45 days a year, grants of substantial sums to favourites of the court for their "intellectual" contribution with no explanation as to what the contribution actually was and profligate travel budgets. Questions were also raised over the use of Commonwealth cars.

Nicholson has been well known since the 1980s for spending much of each year touring the world attending conferences. To his critics it was self-evident that this luxurious first class lifestyle was of no benefit whatsoever to the taxpayers footing the bill. In the previous 18 months or so Nicholson had attended conferences in England, Hawaii, South Africa, Scandinavia, Port Moresby, the Great Barrier Reef, the Gold Coast, Sydney, Perth, even his home town Melbourne. There is no publicly available list of all these conferences or of their cost.

Senator Brett Mason had previously said that complaints about the administration of the Family Court have come from many quarters. "It was widely acknowledged within the court itself and in the legal community that some Family Court judges were not pulling their weight," he said. "With the Chief Justice seemingly unable to address this issue the Court's morale was affected."

In refusing to answer a number of questions posed by the Senate, Nicholson claimed that the independence of the judiciary was being attacked.

"Despite the Chief Justice's protestations, the Family Court must be accountable," said Senator Mason. "Judges are paid by the public and are accountable to the people's representatives - that is the Parliament - it is pompous posturing to say that parliamentary scrutiny of the Family Court has amounted to an attack on judicial independence."

In 1999 the governments own chief legal adviser, the Australian Law Reform Commission, found overwhelming disquiet amongst both lawyers and lay litigants with the operation and the practices of the Family

Court. This was the most detailed snapshot ever taken of what was happening inside the Family Court and clearly showed it failing to meet the standards not just of the body politic but of the legal community.

Yet the government ignored its recommendation for an external review, in other words a Royal Commission or full-scale public inquiry.

Nicholson's response to the ALRC was defensive, if not abusive.

But as Dr Robert Kelso, a commentator on public sector ethics and editor of the academic journal on family issues Nuance, said, the report clearly showed its failings, not just in the eyes of the general community but also for influential sections of the legal community.

"Nicholson leaves the court in a very vulnerable state," he said. "It has been politicised and has become utterly dysfunctional.

"The Family Court's philosophies have never reflected general community understandings of family or of probity in public life. It is secretive and resistant to change. It is one of those social experiments that has diminished the rule of law, not improved it. It has diminished the understanding of courts as places where justice is dispensed in the best interests of the country.

"The effects of the Court on second wives and their children have been particularly harsh. These are the people the Family Court, the government and the legal system refuse to recognise in an equitable way. Rising suicide levels among excluded parents and extremely poor outcomes for children has created broad antipathy within those sections of the community which have been adversely affected by the Family Court and related government agencies.

"Nicholson's very public approach to judicial activism has led him to imagine he has a duty to change community standards on a whole range of issues, on everything from DNA testing to social parenting and the importance, or as he sees it unimportance, of biological fatherhood, even if that means confronting the parliament and the legislation in ways which clearly overstep the separation of powers."

The world had changed around Nicholson.

He was appointed in an era before the world wide web transformed debate on family law. The net proved all over again the old adage that knowledge is power, turning once secretive courts on their head and transforming the father's movement into an outraged and savvy force empowering individuals with legal know how and survival strategies, but allowing scattered groups more cohesion through chat lines and a more immediate "physical" presence on the web.

The Nicholson who appeared before the inquiry was a diminished figure in an argument to which he was being relegated to a bit player. He was offside with the government, his peers and many in the community.

Numerous scandals circled the court. A once sycophantic media was proving far less compliant. The wails of discontent which had been relegated to early hours talkback were now running prime time. Australia's number one talkback host Alan Jones received more than 6,000 emails when he raised the issue of child support and the treatment of non-custodial parents, more than he had ever received on any subject.

Nicholson had spent much of the previous 15 years immersed in the radical feminist analysis of power. He was now forced to watch as his own power ebbed inexorably away.

Gone were the days when the Family Court of Australia was not just hated but feared; with fathers frightened to speak out or become politically active for fear of the consequences for their children.

On the 14 June 1990 father Charles Jensen was arrested and charged by a posse of three Australian Federal Police after he sent four letters of complaint, three of them addressed to the "Chief Justice of the Anti-Family Court of Australia Mr Nicholson".

The letters suggested the Court should be located at the Eastern Creek dump "considering the garbage that issues from the present building".

Mr Jensen was convicted for sending offensive material through the post.

Now, from the learned to the profane, far worst terms of abuse and allegations of corruption than a mere suggestion the court belongs in a rubbish tip flash across the net everyday. Fathers regularly share their disgust over the perceived bias and extremism of judges and family report writers and plot ways around them. The government inquiry itself has posted submissions on the web which label the court as "criminal" and refer to the "hated" Nicholson.

Nicholson had made many enemies. Class or civil actions against the court may well become a common part of the legal landscape. Nicholson himself enjoys lifelong immunity from civil suit that is enjoyed by all judges of superior courts in Australia. He has no immunity from the processes of the criminal law for acts done in the exercise of his judicial functions.

Former President of the NSW family Law Reform Association Max King has previously said that as a whistleblower himself he had experienced similar treatment.

"Fathers soon discovered there was no such thing as free speech in Australia," he said. "There was an enormous fear generated by the court, with trumped up criminal charges levelled against fathers, and the constant threat they would never see their children again. In the Association meetings shell shocked fathers would arrive unable to believe what had happened to them and their children.

"The story was always the same: the false allegations, of violence, the false child abuse allegations, the loss and alienation of their children. It is no wonder so many thousands of fathers have committed suicide."

Dr King initiated proceedings against Mr Nicholson in the NSW Supreme Court in 1994, seeking redress against him over his administrative role in the Family Court at the time of his own complaint. Whilst the action was dismissed on technical grounds, Dr King says there ought to be numerous similar actions in the coming years as "the true history of the Family Court becomes apparent".

The nature, style and substance of family law in Australia had been almost entirely dominated by one man. In more than a quarter of a century no Chief Justice of the Court, either its founding head Elizabeth Evatt or Chief Justice Nicholson, who came to power in 1988, had ever, that we can find, said a positive public word about fathers or fatherhood.

To fathers and family law reform groups he was Public Enemy Number One.

For them, his reign had seemed interminable, as if he was the beginning and the end of everything that was wrong with family law; and to his increasingly vociferous critics on the country's ballooning men's internet news and chat lines he was the focus of blame for everything that had gone wrong in their lives.

His numerous pronouncements were followed with a kind of lurid contempt.

With more than a \$100 million budget, Nicholson had a great deal of public largesse at hand to build an empire in his own image. Nicholson, an inveterate conference goer, was a "devout member of the international judicial jet set", as one columnist described him. He was never a man shy of putting forward his numerous views on human rights and the best interests of children. But to his many critics in government, the legal profession and the community, Nicholson's legacy was a destructive, dysfunctional and discredited court.

Nicholson, with impeccable left wing credentials, was the failed Labor candidate for the seat of Chisholm in both 1972 and 1974. But for the man who was to become the face of such a divisive jurisdiction, and who now 15 years later was about to leave it in complete disarray, there was little beyond being a loyal Labor man in Nicholson's background prior to his elevation to Chief Justice to suggest an interest in family law or his appropriateness for the office.

He graduated in 1960, became a QC in 1979 and during the early 1980s acted as Chairman of the Town Planning Appeal Tribunal and Land Valuation Board of Review in Victoria. He was a Judge Marshall with the RAAF just prior to his appointment, and a Judge Advocate General with the Australia Defence Forces right up until 1992. None of these fitted very well with his later façade as creature of the far left; and were conveniently forgotten.

From marvellously progressive to Stalinesque, the views circling around Nicholson had grown more extreme as he aged. As one former Family Court judge said: "I started off as a fan of Nicholson, but he has turned the court into a disaster."

On the other hand, to his supporters within the family law industry Nicholson's impending, although utterly confused, departure into retirement was a matter of consternation. For the first time since the Family Court's creation the appointment of a Family Court Chief Justice would be in the hands of a conservative government. Just as former Prime Minister Bob Hawke's appointment of Nicholson fifteen years before was one of his most significant, so Prime Minister John Howard now had the chance to remake the Family Court; and thereby much of the country's social agenda.

Nicholson was a staunch defender of his court and its practices and an equally vocal critic father's groups, which he dismissed as "sinister" and "dysfunctional". He had been appointed by the Hawke Labour government until the age of 65; August 19th 2003; slap bang in the middle of the inquiry. He was seen by the advocates of reform as the single biggest block to reform of the Court's sole custody regime.

In July 2002 Nicholson had announced via media release and on the Family Court web site that while he had greatly enjoyed his time as Chief Justice he would cease hearing cases on 1 February 2003 and take accrued leave until March, 2004. As it turned out, these statements were false.

The announcement of Nicholson's departure led to headlines ranging from "dark legacy" to "the man who loved children", illustrating the media's schizoid approach to him.

A fortnight before he was due to stop hearing cases, Nicholson announced he now "took the view it wasn't fair" to step aside and didn't "want to let anyone down". He blamed in part the Federal Government's tardiness in appointing new judges for being forced to soldier on.

His critics suggested that this was rich coming from a man who, as exposed by Senator Brett Mason in hearings of Senate Estimates Committees, sits less than 45 days a year and heads a court where some judges sit even less than that.

August the 19th 2003 came and went and Nicholson did not retire. There had never been any public announcement of any kind to suggest that he would serve beyond the date of his appointment.

Why, fathers and family law groups around the country asked, was he not retiring?

There was no explanation coming from either the government or the Family

Court to explain the mysterious vagaries of the retirement schedule of Nicholson.

Critics argued that his failure to retire on schedule raised issues of conflict with the constitution in relation to Family Court judges and their retirement ages; and in any case if there was to be proper implementation of joint custody it would be impossible without a clean broom through the Family Court.

The consequence of the unconstitutional appointment of a judge is everything they have done in their position is invalid.

Both the Shared Parenting Council and the Men's Rights Agency put out detailed statements on the issue.

Sue Price at the MRA, one of the staunchest and most lucid of all the country's family law reformers, put out the following background notes to this complex but intriguing scandal. It illustrates much about the alleged maladministration of the court.

"When the Family Law Act was created in 1975 there was no set retirement age for judges, who were appointed for life. Following a referendum in 1977 a retirement age of 70 was set for most judges; while subsequent changes set the retirement age of Family Court judges at 65.

In 1977 the Constitution was changed to read in part:

"72. The Justices of the High Court and of the other courts created by the Parliament—

"(i.) Shall be appointed by the Governor-General in Council:

"(ii.) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity...

"The appointment of a Justice of a court created by the Parliament shall be for a term expiring upon his attaining the age that is, at the time of his appointment, the maximum age for Justices of that court and a person shall not be appointed as a Justice of such a court if he has attained the age that is for the time being the maximum age for Justices of that court.

"Subject to this section, the maximum age for Justices of any court created by the Parliament is seventy years. The Parliament may make a law fixing an age that is less than seventy years as the maximum age for Justices of a court created by the Parliament and may at any time repeal or amend such a law, but any such repeal or amendment does not affect the term of office of a Justice under an appointment made before the repeal or amendment."

Sue Price records that later on in the same year, 1977, an amendment to the

Family Law Act 1975 was introduced by our current Prime Minister John Howard to lower the retirement age for the judges of this court to 65 years of age.

His argument detailed in Hansard on page 818 on Sept 7, 1977 suggested that: "... it is generally conceded that in family law, more than in most other areas of law, judges adjudicating over disputes should be aware of and keep abreast of current social values and attitudes. For this reason, and also because of the demanding and arduous nature of at least some of the disputes - notably, defended custody disputes - there seems to be good reason for requiring judges of the Family Court to retire at least by the age recognised as the maximum retiring age for most other occupations in the community."

The Parliament accepted this bill and the Family Law Amendment Act 1977 was assented to and commenced on 11 October 1977.

No more changes to the retirement age for judges of the Family Court were made or suggested until the first report of the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act in 1991. The Report recommended that the Family Law Act be amended to fix a maximum retirement age of 70 years for Family Court judges. That legislation was enacted and commenced on 25 October 1991.

The Constitution states quite clearly:

"The appointment of a Justice of a court created by the Parliament shall be for a term expiring upon his attaining the age that is, at the time of his appointment,..."

Those few words are enough to raise questions about the retirement of the current Family Court judges.

Were they appointed

1) between 5th January 1976 and 29 July 1977 - when judges were appointed for 'life' under the terms of the Australian Constitution.

2) After 29 July 1977 but before 11 October 1977 - when alterations to the Constitution on 29/7/77, as a result of a referendum, imposed a retirement age of 70 years.

3) After 11 October 1977 until 24 October 1991 - when on 11/10/77 the retirement age of judges was reduced to 65 years of age to comply with s 23 A of the Family Law Act and the Constitution.

4) After 25 October 1991 to date - when on 25/10/91 S23A of the Family Law Act was repealed, thus allowing Family Court judges to stay until 70 years of age.

As a matter of interest, when the Chief Justice of the Family Court Alastair Nicholson expressed his views to the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act in 1991 he wielded considerable influence that resulted in the recommendation to extend the age to 70 years. Nicholson argued, as detailed by MP Ian Wilson in his second reading speech the following:

“But I note the views of the Chief Justice of the Family Court, the Honourable Justice Nicholson, who queries whether the job of a Family Court judge is necessarily more stressful than that of a judge in any other court or the jobs of many other people who are aged between 65 and 70. I quote from Mr Justice Nicholson's submission to the Committee from whose recommendations this Bill has emanated. His Honour said:

"The work of Judges in all such Courts is stressful. There is little to choose between the emotional strain of conducting a criminal trial and arriving at an appropriate sentence, for example, than there is in conducting a trial of a custody or access issue. Matrimonial property disputes frequently require Judges to display the same skills and learning as is required of a Court of Equity."

Nicholson would appear to be one who falls into category 3 – those who must resign at the age of 65 years.

Other Family Court judges who were appointed during the category 3 period would also be required to resign on reaching the age of 65 years on our understanding of the provisions contained in the Constitution and Family Law Act.

Our inquiries indicate that there appear to be 18 judges, including the Chief Justice Alastair Nicholson, who were appointed between 11 October 1977 and 25 October 1991 to the Family Court of Australia. Some have already retired, some were over the age of 65 years at the time they retired, and others should be retiring as their sixty-fifth birthday arises over the next few years.”

To others, too, it appeared clear that Chief Justice Nicholson should retire.

The Shared Parenting Council of Australia put out a statement that in accordance with Section 72 of the Constitution of Australia, the Chief Justice, having reached age 65, must retire from the bench, and leave the Court, contrary to his own decision to stay until February 2004.

The SPCA said: “The Family Law Act, at the time of Alastair Nicholson’s appointment, was unambiguous about the retirement age of a judge appointed to that Court - and they must retire once attaining the age of 65 years. The constitution is also unambiguous.”

Rod Hardwick, President of Dads Australia, also lent his support to the calls for Nicholson to retire on schedule.

"Family law is in complete disarray in this country," he said. "That is in no small part the responsibility of the present Chief Justice, Alastair Nicholson.

"The massive harm that the Family Court has done to hundreds of thousands of families and to the community at large cannot be underestimated in financial, emotional or legal terms. Nicholson has never to my knowledge ever made a single positive comment about fathers or fatherhood. The government should take the opportunity of his retiring to completely reform or abolish this institution. That the Court is failing to comply with its legislative obligations to act in the best interests of children is self evident to every objective observer of the court. Nicholson's claims that the court is not biased against fathers are simply preposterous.

"How can fathers possibly have faith in a court where the judges cannot even retire when they are supposed to?"

As it turned out, without fanfare or any public announcement, but clearly prepared for potential controversy, the Attorney General Daryl Williams's office placed a statement on their web raised as many questions as it answered, but was remarkable in several points:

- * It was the first public admission that Family Court judges had, in apparent secrecy, resigned their commissions and been recommissioned to extend their retirement ages.
- * It sheeted home blame to the former Keating government.
- * It failed to offer any legal argument or any legal explanation to rebut the claims by the Shared Parenting Council and others over Nicholson's retirement.

Here is the statement in full:

"Talking points by the Attorney General for the media in response to a news release by the Shared Parenting Council of Australia:

"Consistent with the relevant provisions of the Family Law Act when he was appointed to the Family Court in 1988, Chief Justice Nicholson was originally appointed until he turned 65.

"In 1991, a Parliamentary Committee recommended that the Family Law Act be amended to increase the retirement age for Family Court judges from 65 to 70.

"Legislation to give effect to this recommendation was passed by the Parliament and came into effect in late 1991.

"Subsequently, Chief Justice Nicholson and all other Family Court judges who had been appointed until age 65 were offered the opportunity to be appointed until age 70.

"On 28 October 1993, Chief Justice Nicholson and a number of his colleagues

were each appointed until they attained 70 years of age.

"Any suggestion that Chief Justice Nicholson's appointment is unconstitutional is misconceived."

But just exactly how the claim that Chief Justice Nicholson's continuing service was unconstitutional was misconceived was never explained.

The Shared Parenting Council of Australia requested from both the Family Court and the Attorney General's Department the full list of judges involved in the resignations and recommissionings, the resignation letters of the judges to the Governor General of the day, Bill Hayden, and copies of the Government Gazette Notices and Media Releases of the AG and FCA that advised the public of these re-appointments.

The SPCA put out a statement suggesting that the more than 20 groups they represented awaited the information with interest.

"The Question that now remains is: What possible reason was there for a number of judges resigning and being reappointed other than to defeat Section 72 of the Constitution?"

"Where are the Gazettes and the Media Releases of the AG and FCA from October 1993 that proves this to be the case?"

"The basic principal of law, arising from the English Law and inherited into Australia, is that a Court cannot do indirectly, what it cannot do directly.

"In other words, if the parliament cannot directly alter the terms of office of a judge directly, it cannot do it indirectly - by a contrived resignation and reappointment.

"The next legal question is - how can this appointment be upheld as constitutional if the purpose and only purpose of the resignation and recommissioning is to defeat S 72 of the constitution.

Dads Australia, attempting to turn up the heat, said the Criminal Code of 1995 is applicable to the judiciary as well as each and every member of the public.

Dads Australia have called for an inquiry into the resignations and recommissioning of the Family Court Judges. "If their recommissioning and/or term of office past the age of 65, is found to be unconstitutional we demand that appropriate criminal proceedings be commenced. This is potentially the greatest constitutional crisis in Australia since the 1975 sacking of the Whitlam Government by the then Governor General Sir John Kerr."

But nothing happened.

CJ Nicholson continued to hear cases, he continued to give speeches and he continued to write and make public pronouncements against joint custody.

Chief Justice Alastair Bothwick Nicholson appeared before the House of Representatives Family and Community Affairs Committee inquiry into child custody matters in the company of Justice Richard Chisholm, Chief Executive Richard Foster, Principal Mediator James Cotta and General Manager of Client Services Jennifer Cooke. He was giving interviews.

The committee took the unusual step of releasing a summary of the Family Court's submission:

"The Family Court submission (No. 751) is available on the inquiry website. The submission explains the major provisions, philosophy and effect of the changes made to the Family Law Act in 1995.

"In particular it notes that the change of language (removing terms implying children as property) in that legislation has changed neither behaviour nor language in the community. It also is critical of the lack of clarity around the terms in the legislation and submits that this has exacerbated disputes between parents.

The submission provides information on several previous parliamentary considerations of the issues before the committee since the Family Law Act was first enacted, and discusses the diversity of clients who seek assistance from the Court and how this would relate to a 50/50 presumption in the best interest of the child. The submission explains the Court's approach to case management and resolution of disputes, interim applications, the voices of children and enforcement, including how the Court's non-judicial processes encourage on-going involvement of parents.

"The Court itself is questioning the impact of the traditional adversarial model of litigation in disputes over children. It takes the position that the problem with the current family law system does not lie in the legislation but in the procedure. The submission refers to the possibility of increases in litigation from the proposed amendment (based on the experience of the impact of the 1995 reforms) and the need to manage disappointment when expectations are not met because of the complexity of family situations which do not fit the 50/50 template.

"The Court will be providing information from a statistical survey of court files in order to provide the committee with more detailed information on outcomes, which is not generally available through"

Nicholson opened with these remarks: "Chair, as a matter of form, I would like to indicate the way in which both Justice Chisholm and I are here, and I do so simply for the record. As you know, judges are not normally summoned to parliamentary committees but both Justice Chisholm and I took the view that we wanted to be of assistance to the committee and felt it appropriate that we

should attend. The first time I appeared before such a committee, I took advice from the then Chief Justice of the High Court, who was of the view that that was an appropriate course. I mention that simply for the record.”

Throughout the day Nicholson showed no self doubt. He had no answers for the courts numerous problems. But plenty of questions went unasked. The spurious decision making processes, the systemic abuse of psychiatric evidence which mars the court, the massive volume of complaints from the litigants themselves, the connection between family law and child support and poor outcomes for all involved, all went unasked.

But one of the first questions he faced was on the issue of perjury in the court, sometimes known as The Palace of Lies.

Committee member Julia Irwin noted that the committee had heard complaints, particularly from men's' groups, about perjury in family law proceedings and that the courts do nothing about that. “This is most often raised in the discussion of false allegations of violence or child abuse, as you would be aware,” Ms Irwin said. “Given that perjury is a criminal offence that requires police action and a decision to prosecute, what can the Family Court do to address this problem?”

Chief Justice Nicholson responded that “allegations of perjury are thrown around very freely in family law matters, and understandably because two people often have two very different views about sets of facts. Undoubtedly, there are some people who do tell lies in court -there always have been. The court is not an investigative agency. If a judge feels that there are particular concerns about the evidence of a witness all they can do is refer that matter to the Attorney-General's Department. They cannot really refer it to the DPP. My experience of having done that is that nothing happens. Very rarely someone might refer it to the Australian Federal Police and they go round and make some investigations, but that is quite uncommon.”

This response attracted an almost instant denial from the Attorney General's Department. The Age on the next day, a Saturday, reported that Family Court Chief Justice had accused bureaucrats of failing to act against those who lie in court during custody disputes. It said a spokesman for the Attorney Generals Department rejecting the claims saying the department received “no more than three or four referrals a year” of alleged perjury from the Family Court, and the department took the claims very seriously.

That the department no longer appeared to be protecting Nicholson was perhaps indicative of the change in Attorney Generals, from the mild mannered if not seriously snowed Daryl Williams to the determined reformer Philip Ruddock. (um Geoff do you do all this in the politics bit?)

On the question of a rebuttable notion of joint custody he said if there was a presumption there was evidence “that judges sometimes get a bit lazy in relation to a presumption like that and tend to find it easier to apply it than to

not apply it. I would hope that would not happen here, but I think the effect would be less there.”

Following further questioning he said: “I do not think it is a workable proposition in the Australian community. I do not think that is going to fit very many families. We are dealing not just with middle class families who are involved in a split; we have serial families. There might be three children of three different fathers in one family—there are constellations in those families. To start imposing this kind of concept of equal sharing is so inappropriate to most Australian families that it is just not going to work. I think it is so inappropriate to most Australian children to say, 'There is a presumption that you have to spend equal time with your father and mother.' You are not talking about quality time, you are talking about equal time. It seems to me that quality is the important thing about the relationship between parents and children, not the measure of time. Try to tell a 14-year-old that they have to go to dad's next week because that is the rule. That kid is going to say, 'I have this on and that on and I have to see my friends.' It just does not seem to me to be a realistic concept....”

Nicholson denied that there was already an existing presumption that the court had an “80-20” presumption where fathers were given a standard every second weekend and half of school holidays for men.

“From my point of view as a judge — and, I am sure, for all my colleagues — the most horrible decision we ever have to take is to say that someone should have no contact with a child. That is something that is extraordinary stressful and very difficult to have to do—and it is very rarely done. We try and produce the best contract arrangements that we can. It is not question of just simply applying a formula.”

Committee member Labor MP Jenny George, from the working class seat of Wollongong, (Illawara?) asked: “So is it just coincidental that, in the statistics that you give us, contact agreed to in consent applications is 40-odd per cent in that 51 to 108 days, contact agreed to in settled applicants as high as 50 per cent and in judicially determined matters around the 70 per cent mark? Is there a mind-set that the system has perpetuated that we need to understand or try and break?”

To which Justice Nicholson replied: “I do not believe so...”

What the committee had failed to note in its frequent affirmation of this so-called 80-20 presumption mention was that this was “if you’re lucky” and if the custodial parent complied with the court’s orders; for which there was almost no enforcement. Or that prior to reforms in 1995/96 one in four fathers had no contact with their children after leaving the court; and almost 50% of fathers continued to lose almost all contact with their children within two years of separation, often because of the enormous road blocks put in their way by the court and the mother.

Nicholson said: "I think that what is happening here when you talk about 80-20 is that the court is being 'blamed' in effect for what is a societal expectation in relation to young children. The court does not have any 80-20 rule, for the reasons I have been explaining. It deals with matters on the face of them as they happen. I do not sit there, count it up and say, 'Who's this way and who's that way?' You have got to realise that quite often there is no issue when we are talking 80-20. There are a lot of cases where there is absolutely no issue - that is, the father does not want the children on terms other than those being discussed. As I said, there are occasions when our counsellors have to actively persuade the father that they ought to see the children. There are many cases where the father does not turn up when such an arrangement is made.

"So it is not a presumption. If you have a proper case on residence to place before the court, there is absolutely no presumption against you at all and you are dealt with in the same way as any other litigant: you have either got a case or you have not. The interests of the children are what we are concerned about, not the interest of the person. It seems to me that the presumption has this problem: you are saying that there is a legislative expectation that the children will be shared equally, and that just is not the reality of Australian homes. That just is not the reality of life at the moment; you just do not have people who can comply with that sort of a presumption. I think it will cause a lot of difficulty."

The reluctance of the court to alter its practices or admit fault was evident when Committee member Pearce asked what would, given that the court already had to discretion to make shared parenting orders, actually change if the legislation was shifted to a rebuttable presumption of joint residency.

Nicholson responded that "If you are talking about actual hearings before judges, the effect would be much less than would be the situation prior to that time because, as you correctly say, the issues would all be before the judge and it is subject to a best interest test anyway. The judge would, I expect, proceed to examine the evidence and probably come to a decision in much the same way as they now do... The real effect comes at the earlier stage because we know it is an expensive business to go to court, we know how difficult it is to go to court without representation and we have got a situation where the legislature is saying there is a presumption of fifty-fifty. Parents may be more inclined to simply give in on that without regard to the fact that it might have a detrimental effect on their children. There is plenty of evidence already, with the legal aid difficulties, of people not being prepared to pursue litigation simply because they cannot. I am not prepared, as a matter of principle, to say that in general it is better to have an equal sharing of time of children between parents; I think each family has to be looked at in its context... I get concerned when we start to say that, for people who are in conflict, there is a

presumption that they ought to share their children equally... I just have great concerns about it.

I have great concerns when I look at the differing ages of children and their development, too. One thing might be good for a three-year-old.

“It is a sort of one-size-fits-all suggestion that does not take into account the effects on individual children. I am concerned that it will be forced on people. Also, I am concerned about aspects of violence in relation to it. When there has been, for example, a history of violence in the family I am concerned that a controlling type person may well say, ‘I want my half share,’ and the other party may well not be able to withstand that.”

While CJ Nicholson did not get the grilling that some family law reformers would have liked to see, the Committee appeared at the time to be fairly sceptical of many of Nicholson’s pronouncements. Committee Chair Kay Hull queried Nicholson’s assertions that there could be a significant increase in litigation if rebuttable joint custody; saying she thought the presumption of joint custody could mean fewer cases going through the Family Court “simply because we will have put in an intervention pathway”.

Committee member Pearce said of the court that “We have heard time and time again that it is just a toothless tiger, particularly in relation to contact. That is the classic, I would think; dad has shown up to pick up the children on Friday afternoon and mum has done every single thing possible to stop the contact-for example, she has gone away for the weekend. It happens time and time again and the court does nothing in relation to enforcement.”

To which Nicholson responded: “I had one of those cases before me recently. I said to the father, ‘You’ve proved all these breaches and I gave her the complete dressing down; what do you want me to do? Do you want her to go to jail? I’m prepared to send her to jail if you want me to.’ That was a bad one. He said no. So what is the next step? It is not as simple as saying the court should get tough. Quite often the parents do not want that sort of result either.”

Asked over the question of the possibility of juries in Family Court cases, in order to eradicate the bias of a single judge, Nicholson said it was “an appalling suggestion” which would constitute a “leap back in time” because it would encourage cases being conducted “on quite irrelevant issues about sexual mores and all sorts of matters that would normally now not form part of family law proceedings.”

Committee member Pearce noted in the Family Court’s submission the statement: “A well planned family law system does not exist in this country and has never done so. Why hasn’t it ever existed? What has the Family Court of Australia tried to do to establish a family system that does work?”

To which Nicholson once again repeated his dream of a unified Family Court system that dealt with everything to do with children with professionals working in a “holistic way”.

“So far as the Family Court is concerned, if I were asked about our difficulties, I would say that our primary difficulty is the ability to provide swift and reasonably inexpensive justice to people.

I think that is one of the areas that we still need to work on. We are working on it, as I have indicated, but there are problems. You have to have the resources to do that—and resources have been and remain a problem. I suppose that applies to any institution but, nevertheless, it is a significant problem. There are areas of Australia, for example, that I do not believe we can service as well as I would like to service them or as well as they should be serviced.”

The next day a significant number of outlets ran the Chief Justice’s stance on joint custody. The Sydney Morning Herald headlined theirs: “Family Court chief at odds with PM.”

The wire service AAP ran a story, picked up the next day by a number of newspapers, which began: “The head of the Family Court has lambasted the Prime Minister’s proposal for shared custody of children from broken homes, saying it would never work. Chief Justice Alastair Nicholson was scornful of any suggestion the Family Law Act be changed to presume divorced parents received equal access to their children.”

Nicholson went on: “You’re saying that there’s a legislative expectation that these children will be shared equally and that just isn’t the reality of Australian homes, it just isn’t the reality at the moment. I think it’s inappropriate to most Australian families that it’s just not going to work and I think it’s so inappropriate to most Australian children to say to them...there’s a presumption that you’ve got to spend equal time your father and mother.

Nicholson also suggested that joint custody imposed major difficulties in cases where children were conceived through IVF using donor sperm or eggs or through rape.

Chief Justice Alastair Nicholson was back in the news a mere four days later, once again espousing a single court to preside over all child matters when he delivered the John Barry Memorial Lecture at Melbourne University. Quixotic, perhaps, considering the number of critics of his court, Nicholson said reform of the Family Court system was overdue, saying the current system was compromising the welfare of vulnerable young people. He argued for a unified or single Family Court which would have jurisdiction over juvenile crime, child abuse, adoption, child support, guardianship, divorce and paternity. He said one court handling all child matters would provide a unified response to the families. The concentration and aggregation of yet further power into the Family Court realm met with little enthusiasm.

In his last months CJ Nicholson continued to speak out, on bullying at school, particularly bullying of ethnic and indigenous children, and on his usual array of topics. The government continued to refuse to release any of the details of his secret resignation and recommissioning a decade earlier. The mainstream

media continued to report his pronouncements with due deference. But surrounded by enemies, with few supporters or apologists in the government and serious concern within the Opposition, seriously hated by hundreds of thousands of disenfranchised fathers and their supporters, his final days were not comfortable ones. The shadows on the ancient regime were falling fast.

That in the end Nicholson was one of the only supporters of the Committee's report *Every Picture Tells A Story* guaranteed that it would receive no acceptance by fathers' groups and further brought the legal and political processes into disrepute, emphasising the enormous gulf between the judiciary and those they were meant to serve.

TALES FROM THE SUBMISSIONS

INCOMPLETE

THIS CHAPTER IS COMPLETE. WE ARE PUTTING IT UP ON LINE NOW IN ORDER TO GIVE AN IDEA OF THE BOOK'S PROGRESS AND ITS LIKELY SHAPE WHEN WE'RE COMPLETE.

THERE WILL BE ANOTHER CHAPTER DEDICATED SOLELY TO THE CONTRIBUTIONS OF FATHERS AND FAMILY LAW REFORM GROUPS.

Combined with the people who appeared before the inquiry, the volume of submissions from individuals, a record for the Family and Community Services Committee, showed the depth of feeling on the subject.

There was a battery of more than a thousand government funded bodies, bureaucrats, the judiciary, the numerous representatives from the domestic violence industry, the academics, the women's groups, all making representations on child custody and almost all opposed to shared parenting or joint custody. But in the blizzard there were also many hundreds of submissions from individuals.

Some women and even a few men argued against shared parenting, but the majority of mothers, fathers, grandparents and sympathisers were in favour. A number of politicians made private submissions. And many other professionals, including doctors and teachers, wrote in passionate support.

Some of the submissions, naïve in tone, were little more than pledges of support for shared parenting or joint custody.

Elvira Martin of Toowoomba in Queensland wrote: "I know a father in this type of situation, that was going through a Family Court matter, in trying to get some visitation to see his daughter. And for a number of times the mother has breached the order. It is very heart breaking to see this guy, in the state he's in. There is not a day goes by when he says to me that he wishes that he can see his daughter more often and to even have her stay with him just on the weekends... I feel that fathers should spend more time with their children no matter what the case maybe be, as children need a father as well as a mother."

Glen Gordon of Bellbird in NSW said the proposal for joint residency arrangements for children in separated families was long overdue and there was no incentive in current family law practice for cooperation between parents. He said in his own experience his legal advice was basically "forget it, you are the father and the courts will always side with the mother".

"I thought that this was an appalling approach giving no consideration for the past relationships and bonds that I had forged with my children. I look forward to the development of a family law system that recognises the importance of fathers in their children's lives."

Others were bitter in their condemnation of the system.

Dennis Brown of Calala said there should be an inquiry or Royal Commission into the Family Court and "that to ostracize me in an illegal separation from my own flesh and blood and I will always believe the family law court is a very high profile criminal activity and whether right or wrong it would seem that child abuse and drugs, prostitution, street kids all stem from it."

Errol Hunt of Manly in Sydney wrote that since he had first contacted the government on the issue "the male suicide rate has accelerated due in no small part to the utter helplessness felt by the dispossessed party, as I prefer to call the poor male who inevitably loses his children to the occasional contact offered.

"He is required to pay the bulk of the monies he earns to the ex-wife, save for that obligation to the tax department of 50%. This woman now inevitably has another 'partner' in tow. He also has no idea as to how his funds are even spent, if such monies are indeed spent on his children. The ex-wife's income does not seem to be taken into consideration, nor the live in lover's finances.

"The Courts are a graveyard for hopes of equity in an inequitable situation. Costs of action to attempt a modicum of fairness are prohibitive. The result is utter hopelessness, depression and often suicide."

Evan Carson, from the fishing village of Ulladulla on the NSW south coast, said he would have loved to have equal care of his children but was strongly advised by his solicitor that there was no point in going for anything but every second weekend and half the school holidays and if he did he could be up for costs. "This news was fairly devastating as I was not in a financial position to go to court and all local anecdotal evidence suggested that my solicitor was correct," he wrote.

"The Family Court should be removed from making as many decisions as possible. Bearing in mind that almost 50% of marriages end in divorce, local institutions need to be established that look at a fair and prompt closure to the most complex of decisions. All relevant information can be heard in the local environment and air decisions made.

"It has been apparent that the Family Court has never been able to make fair decisions regarding custodial arrangements of children. When the Family Court is forced to make decisions, the mother almost always wins custody. Mothers know this. Fathers know this. Solicitors know this. This understanding does not make that decision correct. What it does, is to keep many people out of the court system because decisions are costly, time consuming and predetermined."

Mr Carson said he had remarried but as a second family they were struggling to cope with the imposts of the system, particularly with the combined operation of the Department of Social Security and the Child Support Agency.

“This means that we can hardly afford to live together on what remains of my salary after my own child support payment is made. The laws at present and the anomalous regulations of both Departments concerned contrive to make our lives extremely difficult and are unfair and equitable...

“It is hardly surprising that so many second marriages fail when you weigh the negative financial situation against the stressful dynamics involved with establishing a new family. The desire for success in a new family situation can easily succumb to financial stresses despite the best efforts of all concerned.”

Carson, like so many others, is also highly critical of the administration of the Child Support Agency, saying information received from them is frequently incorrect or misleading, and that one frequently has to make several phone calls to find someone who can provide support and more importantly, correct information. “I feel that I am burdened with an emotional and financial cost that I have no option but to pay.”

He said throughout Australia people were battling with what appears to be a raft of unjust and inequitable regulations that are the cause of much desperation.

He concluded: “It is no surprise that teachers spend a large part of their day addressing social issues, many the result of baggage brought to school by children from broken homes. It is no surprise that many men feel that current laws are biased in favour of the mother and these laws have created a large body of angry and distressed men. It is no surprise that so many mothers walk out on marriages when they know that current laws support them in regard to child access and support. It is no surprise that in anger, distress and confusion so many men create further problems for themselves by the non payment of child support or violence towards an ex partner. It is no surprise that there has been a dramatic rise in male suicides.”

Other contributions, as with the public hearings, also condemned the Child Support Agency. Harold Craig of Bellambi said the existing child support formula “does not work and is in fact preventing non-custodial parents in many cases from being able to practise and enjoy access to their children. It is far too rigid with little or no consideration of extenuating circumstances. It is unfair that two children of the same parents can have very vastly different opportunities in life... It is my personal experience that the children are nothing more than a source of income and opportunity to most custodial parents and a very spiteful way to destroy the other parent.”

A number of politicians made personal submissions to the inquiry, some in camera.

Government Whip Joanna Gash, member for Gilmore centred around Nowra on the NSW South Coast, said amongst the issues being raised in her office by fathers included paying child support children and not being given access ordered by the Family Court.

Paul Neville, the Federal Member for the rural seat of Hinkler around Bundaberg in Queensland and National Party Whip, said he saw a constant pattern of abuse, especially on the part of the custodial parent.

“Frequently, vindictive custodial parents will place as many hurdles as possible in the path of the children having contact with the non-custodial parent,” he said. “For example, 'the child is in the grand finals and shouldn't miss their chance', 'I can't afford the warm clothes needed for your climate' or, 'the child is sick'.

“I see many non-custodial parents, deprived of contact with their children, becoming extraordinarily stressed. In many instances they cannot afford legal redress and the custodial parent, for want of a better expression, 'gets away with it'.

“When eventually some 9, 12 or 15 months later the non-custodial parent obtains legal aid (most infrequent), or raises the money for a legal action, the custodial parent is invariably given a caution or rap on the knuckles.”

Ken Ticehurst, Federal Member for the NSW Central Coast seat of Dobell, was one of the figures who had for months been urging the Howard Government to acknowledge the outcry around the country relating to laws governing child access rights and our family law system.

In his submission he said that in the previous year, after having many mothers, fathers, grandparents, aunts and uncles approach him with their painful experiences of the current family law system, he formed a discussion group of politicians to address the need for family law reform.

He described the inquiry as good news for many people in the Central Coast region who had expressed to him their frustration with the Family Law and Child Support Acts and their administration. He said he had been bombarded with congratulatory messages since the inquiry was announced.

Ticehurst detailed common themes brought to him:

- Lack of enforcement of Family Court rulings with respect to access, further legal action by non-custodial parent is too expensive
- More support to encourage self-representing litigants
- Perceived bias toward custodial parent in the Family Court
- Not enough emphasis on mediation
- Family Court delays in interim access orders
- Calculation of Child Support Agency payments far too onerous, formula is unsuitable
- Non-custodial parents' living arrangements not fully considered when determining child support payments
- Non-custodial parents' children not considered in child support assessments
- Child support payments made to custodial parent while children in care of non-custodial parent
- No progressive review of custodial arrangement as child grows

- Grandparents and great-grandparents not recognised formally in custodial arrangements.

A significant number of professionals made well argued contributions.

Dr Brian Ronthal, a doctor in a country general practice with experience in managing families going through separation, divorce and custody battles, wrote:

"A retrospective law allowing equal custody needs to be made for the thousands of children who currently already have court orders restricting access with their fathers to fortnightly or less. These children cannot be left out. Existing court orders restricting paternal access to fortnightly visits needs to be annulled without having to go through a court case. This ought to be achieved by filling out an application form

"The presumption of equal custody needs to be achieved without court judgements... The extreme adversarial nature of the Family Court adds dramatically to family conflict with children being the ultimate casualties. Families which manage separation with minimal Family Court interaction fare best. Equal custody needs to be presumed with as little Family Court interaction as possible... The 50/50 custody arrangements between both parents need to be made law by default without requiring Family Court assessment first because there is little chance of changing the current mindset of the experienced professionals already running the system... Adversarial Family Court proceedings have a severe impact on the developmental psyche of children, which cannot be blamed on the parents but rather on the system itself."

In one of the best argued of all the submissions Angela Dreibergs from Katherine in the Northern Territory said she was writing as a woman, teacher and someone who considers child custody to be one of the most important issues of our time. She said as a primary school teacher she had come across many instances of children who have no contact with their fathers. "This has not been as the result of a Family Law Court ruling but has been something decided upon by the mother," she wrote. "This failure to allow contact is often accompanied by snide comments about their father and general put-downs regarding his character. I have seen first hand the doubt and confusion in the hearts of these children who for one reason or another wonder about their fathers and think that the father doesn't care about them because they are not around.

"I have a boy in my class who lives with his father as his mother is an alcoholic and abandoned her son. The father does very well with his sons' care and is a proud parent. Another boy will be going to live with his father at the end of the year. He has difficulties with his stepfather and his older brother is already living with his father. The boy is incredibly excited and pleased by this.

“I am definitely in favour of custody to be shared equally with both parents. This would give the children a sense of belonging and to have the opportunity to actually know who their parents are and where they themselves have come from. There would be balance for the child. It would also be a fair and equitable system for both parents as they should both be able to see their children grow and develop...”

“Many women decide, for whatever reason: jealousy, nastiness, power, revenge etc that they will make the lives of their ex-partner difficult by refusing any access to the child. This is not because of any direct order from the Family Court. It is something that these women implement as a result of manipulative behaviours.

“Over 41% of all fathers have been denied access to their children in this way. As a woman and a teacher I find it reprehensible that a child can be used like this...”

In amidst the wide variety of material there were even some stabs at black humour.

Matt Shields of Armadale in Western Australia had given much thought to the idea of shared parenting and decided it should be prohibited entirely.

“Non-custodial parents have parental responsibilities, specifically to pay child support to their former partner; but these responsibilities do not extend to include any further contributions to the lives of their former children whatsoever.

“The relatively few shared parenting decisions made in court is proof that we just don’t need it. In the future those judges who attempt to make shared parenting decisions should be horsewhipped for their stupidity and then sacked.

“The Chief Justice of the Family Court has made it clear that the concept of shared parenting would make the whole process of family law unworkable. This makes sense because the notion of shared parenting is alien to the spirit of the family law act. We should take the advice of the Chief Justice and ban shared parenting right now. In fact anyone who attempts this obscene practice should be fined, incarcerated and perhaps horsewhipped with the errant judicial officers as mentioned above.

“Many people have suggested that shared parenting has the potential to cast children into harms way. I don’t know who these people are, but they are obviously right. Anyone with half an eye can see that those persons who struggle to get contact with their kids are really desperate individuals who only want to cause their kids a serious physical injury.

“Children who are denied contact with the non-custodial parent become emotionally enmeshed with the custodial parent and this is good because it makes the custodial parent feel important...”

“Denying a kid contact with the other parent is obviously good for the kid.

“Ban shared parenting!”

Others were more learned in tone.

Paul Johnston, a 31 year old computer software engineer in Canberra, said:

The time that a father forsakes with his children so that he may provide as best he can for the family he is supporting is grossly undervalued by society at large.

Indeed, father finds separation a particularly galling experience for the following reasons:

- ? The time a father spends with his children is reduced to being negligible, because of the roles he and his wife assumed during the marriage, as the courts, and legal profession in general, assume the mother will retain residency, and persuade the father that the idea of “fortnightly fathers” is a fair compromise,
- ? The father retains as little as 20% of the matrimonial property, because he has a demonstrated earning capacity that the courts expect to be met indefinitely,
- ? The father is compelled to work to continue support his child and his wife to within his demonstrated earning capacity.

“I argue that by working, at the expense of time with children, particularly young children, the father is indeed caring for the child, and indeed for the mother of the child, in the most practical way, but at a great personal and emotional cost... The sacrifices of the father has made in working at the expense of time with his family are not ignored by courts, but rather used against him to ensure that those sacrifices continue into the longer term.”

A number of academics arguing on both sides of the fence put in submissions independent of their institutions.

Family law provided a study in the power of the distribution of grant money to academics and researchers to define the debate and for the ability of academic mirrors confirm and validate agendas; often enough to the backdrop of fine wine and late night oceans and yet another eternal conference in luxury surrounds. There were rich pickings to be had.

The Counsel of Perfection, on the history of the Family Court of Australia, received ample funds from the taxpayer to bring it to fruition, but author Leonie Star did not think it appropriate to talk to litigants who had survived the experience. It was a part of the proud tradition in Australian academic life and its social researchers of totally ignoring or dismissing the country’s entire fathers and family law reform movement, their redneck rantings way beneath the social registry.

The Family Court has repeatedly funded academic projects with sympathetic researchers and used the results for its own advocacy purposes.

Professor of Law at Sydney University Regina Graycar had been a determined critic of fathers groups. Her investigation into shared parenting, along with other academics, was used by the Court to support its stance.

She told columnist Catherine Lumby in the news magazine *The Bulletin* that fathers' rights groups had been tremendously successful at gaining the ear of senior politicians but their major claims have no empirical support.

Lumby, never one to miss the ideology in a point, wrote:

“But is greater parenting equality really what this proposal is all about? Scratch beneath the surface of Howard's rhetoric, and much of what is said by fathers' rights groups, and it becomes clear that the real agenda is about reasserting a patriarchal model of the family, not replacing it with a contemporary one.

“Uppermost in Howard's mind, as he told parliament, is the concern that ‘far too many boys are growing up without proper male role models’. It's a concern which distinctly echoes the rationale behind Howard's opposition to lesbians and single women accessing fertility services. The only “proper” family in Howard's view is a heterosexual nuclear one.”

Academic apologists helped provide the props justifying the present family law regime. The government, or at least politicians, embraced them because of a neat trick of mind. Academics could absolve them for the private and social disasters they had legislated into being. Like the Family Court itself, some academics blamed the social phenomenon of rising divorce rates and the poor conduct and unrealistic expectations of the battling litigants for the community's intense unhappiness with the system the politicians had created. The heroic and expensive legal battles of parents trying to do the best by their children led them to be denigrated for their inability to reach agreement with their often Legal Aid funded ex-wife.

With this backdrop the inquiry, far more public an exercise than its predecessors and made more so by the web, provided a chance for those outside the taxpayer funded cliques to put their perhaps unfashionable views.

Dr Robert Kelso, from the Faculty of Business and Law and Central Queensland University, said it was 28 years since the creation of the Family Law Act and 13 years for Child Support legislation.

“The deleterious effects upon Australian families and children and the economic destruction associated with those pieces of legislation and practices are increasing at an exponential rate.

“Despite the damning evidence presented to two parliamentary inquiries and numerous reviews, and the overwhelming rejection of the legislation by

ordinary Australians, the reaction to date by the legislators, judiciary and bureaucrats has been to strengthen the punitive and regulatory mechanisms in the hope that crude force will prevail over morality and common sense. The greatest immediate losers in this process have been children and fathers; the long-term destructive effects upon Australian society have been evident for more than a decade and the time for the parliament to either radically overhaul or abolish those institutions is long overdue.

“Current government policy approaches to marriage and divorce have been driven by ideology rather than the best interests of children. Recent attempts by the parliament to improve the situation have been worse than ineffectual, in many cases they have contributed to or exacerbated the very problems which they were designed to prevent.”

Kelso has taken a particular interest in the operations of the CSA from the standpoint of public sector ethics. He said administrative decisions by child support officers were in effect final determinations and there was no proper appeal mechanism, for example where public servants deem an individual's income. He said the courts refuse to charge the CSA Registrar with contempt when the Registrar or a delegate blatantly ignores court orders.

“Child Support officers also know that despite overwhelming evidence of illegal activity presented to the Joint Select Committee which reported in 1994, that the parliament refused to refer that criminal activity by public servants to the Director of Public Prosecutions or Federal Police. That refusal to address illegal activity by CSA officers has legitimated the contempt for payees' legal rights and entrenched a culture of systemic corruption within the Agency. Any doubt about these issues can be easily dispelled by asking front counter staff in parliamentary offices about the complaints received.

“It is this blatant contempt for the parliament's intentions in legislation and the rights of payees and their children which lead to more than 20 years of complaints and charges of bias and corruption against the Family Court and Child Support Agency. Until now it has been the federal government's practice to ignore those obvious breaches of the laws in the hope that the money collected will balance the evil it has perpetrated. It is obvious now that the strategy is both morally corrupt and economically bankrupt. All we ask is that the government have the courage to confront the vested interests which have constructed the current systems, and that you act in the best interests of children and their families, assert your moral authority and remove this evil source from our children's future.”

He recommended that all deaths of “clients” subject to the Child Support Agency be recorded on those institutions respective files and reported to the relevant minister and the number be published in the Hansard each year.

The suicide rate of child support payers was a topic raised by numerous witnesses and fathers groups. But at the end of an inquiry, which was supposed to determine amongst other things the fairness of the child support

system, we were no closer to being able to answer one simple question: how many child support payers die each day?

In their submission to the publishers and compilers of this book *Dads On The Air* wrote that the issue of the death rate of child support payers would not go away.

“These schemes are being associated with high death rates amongst separated men wherever they operate in the Western world,” their submission read. “Family law reform groups around the country have all claimed that it is likely that around three clients of the Agency suicide each day. The official suicide statistics do not rule out the feasibility of the claim. The government has acknowledged that there is no documentary evidence to contradict the claim. Others suggest that the death rate is likely to be higher than the mere suicide rate suggests because of the poor health outcomes for separated men, exacerbated by poverty, depression and loss of children.

“The government through the Minister Larry Anthony has acknowledged that it does not know how many clients die each day. This is an extraordinary admission. The government needs to take immediate action to monitor the death rate of child support payers so that it can be compared with the general population. It needs to immediately release the figures on how many clients are dying. This is a fundamentally significant indicator of the health of family law in Australia.

“The Child Support Agency needs to be either totally reformed or abolished. It is a clear case of good intentions gone savagely wrong. The take per child is now less than when it was created. The CSA is one of the most deeply hated of all government institutions. There are numerous very well-documented tales of the CSA's destructive impacts on people's lives, including on second families. One interview we conducted at an information night, a second wife lamented that her husband had been stressed out of his mind and had a brain tumour. We asked if the cancer had made the CSA lay off. "Are you joking!?" she asked. It made good radio. It doesn't make for a good society. The Agency creates massive conflict between separated couples and between itself and its clients. It acts to discourage co-operative parenting after separation. It promotes welfare dependence and is the driving force behind the extremely high unemployment rates of separated fathers. It needs to be reformed or abolished to encourage productive and co-operative joint custody arrangements to become the norm.”

Throughout the inquiry the government, or more precisely the public service bureaucracy, dodged the issue of how many child support payers were dying.

Here is the Hansard transcript when the question was finally popped to the head of the Child Support Agency Cathy Argall and the head of the Department Mark Sullivan.

“

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

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

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

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

CHAIR-That would be very helpful.

Mr Sullivan-There is no doubt that separation, and everything that goes with separation, does influence suicide rates in males. One of those factors is child support. It does not provide evidence for or against those who assert that the child support aspects of separation are the issue that drives men to suicide...

The interesting issue that came out of the evaluation is that, with good counselling and good support services, you see a decrease in the suicide rate of males who are maintaining their child support payments. That is not conclusive but it is more suggesting that it is the issue of separation and the trauma of separation which probably needs to be addressed most significantly. We are seeing, out of those 10 or so services, significant positive results and certainly enough for the government to decide to now put in place continued funding for those services.

I will get you copies of the evaluation of the men's relationship programs and anything else we have in the family relationship program area.

CHAIR-That would be very helpful.

"

An evaluation of a family relationship program did not answer the question of how many of their clients die each day. If the claim by fathers groups that at

least three payers die each day then the government had a very serious problem.

This is a crude but fundamental indicator of the health of family law and child support in Australia today.

That a government body can apparently care so little for and have so little duty of care towards its customers that it cannot even count how many of them die each day simply defies belief.

In his submission Dr Kelso wrote that “domestic violence” had re-introduced fault into divorce and allegations without any need of proof became the mechanism to establish a status quo of exclusive or sole residency, with which went a financial windfall. “It is these fail safe mechanisms which the Family Court and the Child Support Agency have been imposing on fathers and children which lead to the charges of bias. Proof of the bias is in the 90% of fathers who lose by default of their gender. He said the abuse of children was narrowly defined to exclude administrative and legal exclusion from the love and protection of their natural fathers.

“The lack of equality before the law diminishes the moral authority of any orders made and often leave the father with no means of reconstructing a life in which he can contribute equally to raising his children,” he said.

He said unemployment was one of the few safe havens for fathers, with up to 40% of CSA clients in this category.

“The loss of productivity and diversion of welfare dollars to what should otherwise be a productive individual is significant. These practices and outcomes are not in the best interests of children; they are not in the best interests of the nation...

“In order to restrict the Australian public’s access to the complete data and the effect of their practices, the Family Court and Child Support Agency resort to secrecy, official misinformation (lies) and refusing to collect critical information on the number of suicides. Section 121 secrecy provisions, jailing CSA defaulters and measures to increase the collection rate from struggling non-custodial parents are signs of a system in crisis. The root cause of that crisis is a lack of legitimacy, the most obvious manifestation is the systemic corruption of administrative systems and legal procedures designed to manufacture consent...manufactured by coercion and exhaustion, emotional, physical and economic... Tearful consent and the subsequent denial of contact with their children in many cases ends in suicide and violence...

“Every day across Australia men suicide as a result of their treatment by the CSA or the Family Court and neither of those institutions will acknowledge their part in the process. The Family Court separates children from their parents. A new stolen generation of children is being created. Civil libertarians who would normally be allies in the fight against injustice are more concerned

with fathers and children in detention centres or in overseas countries but are deaf to their neighbours' cries..."

Technology had rapidly changed the father's movement by enabling the almost instantaneous spread of information, news stories, research and developments worldwide. It facilitated the rapid "wising up" of separated fathers; in the previous five years there had been a rapid expansion of internet chat-lines and on-line communities which meant anyone struggling to understand court processes or struggling with emotional fall out could often get help from survivors.

Dads On The Air was itself a prime example of the way revolutions in computer science were transforming social debate. The technology which made it possible for a small group in western Sydney to create a one hour weekly program that could be downloaded in Mongolia and to attract the country's leading political, academic and social players on fathers issues simply hadn't existed five years before.

The submission from the team at the Dads On The Air community radio program, compilers and publishers of this book, pointed out that for there to be a genuine and effective introduction of joint custody there needed to be fundamental and sweeping reform of the responsible institutions.

"We are aware of a number of scandals circling the operations of family law and child support in Australia which have the potential to seriously embarrass the government," the submission said. "It is unlikely that the mainstream media's traditional reluctance to broach these issues will continue. We believe if the government does not take action it will ultimately be propelled to do so.

"The disenchantment with the operations of the Family Court are broad and profound and extend to the operations of the family law units of Legal Aid. The systemic abuse of psychiatric evidence within the court is at the heart of its discredited practices. It is self-evident that the court uses those psychiatrists and family report writers, the evidentiary basis of Australian family law, which comply with its agenda.

"The conduct of this comparatively small clique of report writers should be the subject of a Royal Commission or similar inquiry. Michael Green QC, author of *Fathers After Divorce*, described the reports on which decisions are often based almost exclusively as "very very poor and entirely suspect". That's being polite. The poor quality, extreme bias and often farcical nature of these reports will ultimately be exposed as corrupt practice. We suggest that any objective investigation into their conduct would provide enough evidence for them to be de-registered, if not charged. The circular nature of the complaints system with Health Care Complaints Units referring complaints back to the court has failed the consumers of these services. Any reform of family law and the introduction of shared parenting or joint custody cannot proceed effectively while these practices continue.

“We believe a proper external audit of the court would reveal much utterly inappropriate conduct by the judges of the Family Court and there is much anecdotal and documentary evidence to support this claim. We have personally witnessed one judge ridiculing a father who expressed a desire to see his 15 year old son after the boy attempted suicide. The mother was, with the apparent support of the court, blocking him from seeing his kid.

“The conversation went roughly as follows. The exact wording could be found from transcripts and we could give you names and dates if you were interested.

”Judge: What do you mean Mr Y when you say in your avadavat that you were

sorry not to be able to speak to your son after his suicide attempt?

Father: I merely meant that after such a distressing event it would have been nice to be able to speak to him.

Judge: What you meant was you wanted to be there to watch, didn't you, didn't you?

Father: Excuse me Your Honour. I merely meant....

Judge: You wanted to be there to watch, didn't you, didn't you!?”

”This appalling display went on for quite some time and was just one example of inappropriate behaviour from a senior judge.

“There are many others, from sheer incompetence in not getting even basic things like trial dates correct to placing children in dangerous situations.”

All the material going up on line was immediately available from the Committee's website. This was in stark contrast to the comparatively secretive public meetings of the Out of the Maze report, where the input of witnesses was heavily interpreted and the will to do nothing apparent to many suspicious participants.

Outside the glib and often repetitive submissions from the hundreds of industry groups, all with a vested interest in the sole custody regime and all opposed to shared parenting, many of those making submissions had clearly thought long and hard about the subject.

Michael Sobb of Rydalmere in Sydney said his reading of a variety of research reports over a number of years had confirmed to him there were a significant number of adverse consequences over the lack of a father. “It is a highly undesirable situation where one parent provides financial support for the children but then is not involved at a commensurate level with respect to the other aspects of parental responsibility and the children's development,” he wrote. “There is no doubt that the children become aware of this and can readily conclude that perhaps they are not deserving of all the shared parenting responsibilities they constantly witness amongst their friends.”

THE FINAL DAYS

After the House of Representatives Family and Community Services Committee wound up its public hearings on 3 November coverage of the inquiry into joint child custody and other matters lapsed into silence for a good fortnight.

The evidence was in. There was nowhere to go.

Amongst family law reformers there was a funny disquiet; was it all another hoax? Would anything really change?

The silence did not last.

The 19th of November saw first up a major string of stories from the Melbourne's Herald Sun which kicked off with the headline "Divorced Dads pay to see their kids", the story provoking another eddy of talkback. "Desperate dads are secretly paying former partners to buy time with their children," the paper reported. "A Geelong father gave his ex-wife \$10,000 to ensure she signed a court order giving him five days a fortnight with their child.

The paper went on to say that frustrated dads "are paying between \$40 and \$80 a fortnight in exchange for the honouring of court-ordered contact visits. The money these dads pay is on top of compulsory child support payments."

The soon to retire Family Court Chief Justice Alastair Nicholson described the case as appalling and told the paper: "One party should not have to pay the other to make the children available."

Surely that was exactly what many court cases were about?

The paper's Paula Beauchamp followed up with several strong stories, including "Desperate dad pleads to see kids", about a man whose children were taken overseas: "The thing I loved the most was stolen from my life." And "Second Wives Worse Off" which began: "Child support number crunching is tearing second families apart, family law specialists say. And some second wives are better off leaving their husbands."

This was followed by the appearance of Geoffrey Greene of the Shared Parenting Council of Australia on the ABC's Lateline debating Kathleen Swinbourne of the Council for Single Mothers and their Children.

Geoffrey Greene said: "The first (principle) is that it's about recognising that every child has a fundamental human right to equal opportunity and relationship with both their mother and father when they separate. And the second principle about this inquiry is that it's about establishing responsible parenthood and for Australia to say to the people or to parents or prospective parents, that we expect you both, jointly, to raise your children and to share the care, the duties and responsibilities of the upbringing of those children.

"Our view is that we believe that we need a system or a structure in Australia to cope with family breakdowns that in the very first instance upholds that child's fundamental right to that relationship with their mother and father and to act in the best interests of the child, which all sides of this debate believe is crucial, we say that you need to uphold that right first.

"And once you've done that, once you've protected that right ... and these are children who can't protect themselves ... once that's acknowledged, then it's about looking at each individual circumstances of each family and coming to an arrangement that suits the parents and children."

The weekend edition of the Sydney Morning Herald carried as its lead front page story "Parents face custody overhaul" framed around a photograph of father Greg Cairns with his three daughters run across five columns pointing to the front page of their News Review Section, which also ran across its entire front page a long feature by Lauren Martin called "Middle Ground" spilling to stories on "How father shares the care", "Robbed by the System", on grandparents, and "The Children: What it is like to be Shared". In SMH terms, it is impossible to get more prominent coverage.

Flagging the gutting or removal of child custody matters from the Family Court, the paper's Lauren Martin wrote: "All separating couples with children would have to lodge 'parenting plans' before a new tribunal under proposals to reduce the trauma of custody disputes.

"Unless violence or abuse was at issue, custody disputes would be removed from the Family Court and dealt with by tribunals or even an administrative agency..."

"The Chairwoman of the inquiry into child custody, the National Party MP Kay Hull said she was "very keenly" examining the idea, but could not confirm that it would be recommended in the report.

The paper went on to quote Committee Member Peter Dutton saying a compulsory tribunal could comprise a child psychologist, a mediator and a family law expert who would be able to draft the conditions of any binding agreements.

The leading broadsheet in Melbourne also ran a story by their law reporter Fergus Shiel under the headline "Law Institute seeks family court 'cure'". He began:

"The Family Court of Australia is in crisis. Delays between the time proceedings are initiated and the time they come to court now stretch beyond two years, the Law Institute of Victoria said.

"The institute's family law section paints a grim picture of an overstretched and overburdened court, in a submission to the Australian National Audit Office.

"As cracks in the system widen, the submission says that it can now take two years or more between issuing proceedings in the Family Court and the time the issues are finally heard."

The paper recorded average delays Australia-wide as up to 23 months to complete the Family Court process, while in Melbourne the delay could be up to 27 months.

The Age recorded the submissions findings that "Despite the best efforts of judges and administration...the court is in a "parlous" state, causing enormous stress to litigants and children. Neither the Family Court nor the Federal Magistrates Court are fulfilling their charters."

Law institute president Bill O'Shea said he wanted the Federal Government to halt the crisis by providing more funding to both courts.

It was not a plea likely to meet with much resonance in the government.

On the 25th November The Australian ran a story titled "Prison and fines to enforce family law" by Patricia Karvelas, following a leak of the draft report, or a chapter of the draft report, from within the Committee. As the internal draft document held parliamentary jail, the offence was punishable by imprisonment. One rumour was that the leak had come from the Labor side in order to help ensure that Howard did not get credit for the reform of family law.

"A three-strikes plan, which uses the threat of fines and jail to force parents to meet their parental obligations after divorce, could be introduced under a draft proposal from the parliamentary committee charged with reviewing the Family Law Act," the paper reported.

"Non-custodial parents, mainly fathers, who for example fail to pick up their children at the time dictated by Family Court orders would face "reasonable but minimum financial penalties" the first and second time they breach

conditions. If the parent breaches the conditions for a third time and shows a "pattern of deliberate defiance", then all access rights could be withdrawn.

"The parent could also face imprisonment if consistently continuing to breach court orders."

The news was met with incomprehension by some family law reformers.

Were they really going to jail the same parents who had just appeared before them, some shedding distressed tears as they told of the tale of destruction that the Family Court and the Child Support Agency had wrecked in their lives and with their children? Why weren't they going to prosecute those who had created and protected this fiasco; the suspect psychiatrists and family report writers, the child support review officers, the judicial officers who allowed ideology to rule as the clients and their children were brutalised, the public servants continuing to ignore the death rate of child support payers and the scheme's disastrous social impacts?

The story was also picked up on the ABC. In a difficult interview on The World Today the reporter Peta Donald claimed the Shared Parenting Council and other lobby groups supported the three strikes and your out idea contained in the leaked draft; losing access, being fined and being imprisoned. The SPCA say they were misinterpreted. Amidst claims that the committee would not recommend a rebuttable joint parenting a concerned Geoffrey Greene said: "We do believe that that right to that equal opportunity and relationship must be a starting point for any custody determinations coming out of these reforms."

The leaks reportedly created consternation in the committee but were not to stop there. By the day the report was handed down virtually all the major recommendations of the report had been leaked, culminating in The Daily Telegraph's front page "Access Denied" – the bitter follow up to the campaigning "Give Dads A Go" headline months before.

The media leaks were all accurate, adding in the end to the impression of chaos, confusion and un-professionalism which was adhering to the committee. From the lack of depth and lack of coherent argument to the nature of its recommendations, the report Every Picture Tells A Story pleased almost no-one but the high priests of the industry.

It was in contrast to the conduct of the public hearings, where many participants reported positive experiences. Witnesses left feeling not only that they had been listened to, but that by baring their souls and their personal struggles with the Family Court of Australia and the Child Support Agency to the committee they had helped to bring about fundamental and desperately needed reform.

The public hearings, held at a cracking pace from one end of the country to the other, had been well run by the Chairwoman Kay Hull; with certainty and compassion. She gave numerous interviews suggesting significant reform was on the way. The committee had shown every indication of understanding the issues.

The day before the launch of the report and the Canberra press conference Labor Party's Opposition spokesman on Family and Community Affairs Wayne Swan came out declaring his party would adopt all of the report's recommendations. Their delight at having such a difficult issue for their party apparently neutralised was clear. For the government to inflame the sentiments of the father's groups right around the country in an election year was clear political insanity. There had been a 12% swing to the Coalition amongst males over the past three elections. They were about to spit on them.

But which ever way the eddies and currents of coverage, rumour, distrust and hope went each day, there was no doubt of one thing; the media thought significant change was on the way.

For every negative story came a positive one.

On the ABC's Law Report that week Michael Green QC, a Sydney-based barrister, a divorced dad and author of the book 'Fathers After Divorce', described shared parenting as "a necessary revolution, because we know and all professionals and all people in this area, apart probably from some judges and lawyers, believe that the present system is simply not good for children and parents, and it's not working and it's not giving children an adequate opportunity or a very good opportunity to bond with both parents in a realistic way. Certainly not with the separated father, because of the shortness of time that he has with his children, it's very difficult for him to develop a meaningful relationship with the children, one that will be for their good and welfare and development. And on the other hand, for the mother, places an unnecessary burden of the responsibilities of raising these children, economically, socially, developmentally, and that's not a good thing either. So what we need is a revolution, and the joint rebuttable presumption I believe is the only way that we'll obtain that revolution."

The battle over the future of the Family Court grew nastier, the court more defensive, its Chief Justice more insulting of its now numerous critics.

In a front page story by Chris Griffith in The Brisbane Courier Mail headlined "Top judge hits family law plan" paper reported that Chief Justice of the Family Court had berated Prime Minister John Howard's plan for reforming family law in a major attack on Government policy. He had been speaking to a forum by

the Domestic Violence and Incest Resource Centre in Melbourne, his natural surrounds.

He described Mr Howard's plan for automatic 50-50 child custody after divorce as "unworkable", detrimental to the interests of children, and "far too simplistic". "It is far too simplistic to change the law and expect parental behaviour to change as a consequence," he said.

In positive tones The Courier Mail reported that the government was considering automatic dual custody; where "even estranged and warring parents would continue to share access and responsibility".

"In cases where there was entrenched dispute, the onus would shift to a parent to legally justify why the other parent should be excluded from the shared arrangement," the paper reported.

Nicholson had gone on to say separated families needed more information and services, not legislative reform "which is more adult than child-focused and which puts unnecessary pressure on parents and children alike to rely on a 'one size fits all' arrangement". "Our experience strongly suggests that a proposal of equal time would be detrimental to the best interests of children and would increase disputation and litigation," he said.

The Age also ran the story prominently.

In yet another attack on shared parenting and the government inquiry into child custody, this time Chief Justice Nicholson, in his natural surrounds at a domestic violence conference, poured scorn on the idea that men are often victims of domestic violence, a claim supported by ample research around the globe.

In a cartoon which was immediately offensive to male victims of domestic violence, well known cartoonist Tandberg portrayed a man being attended to by a doctor. "Your knuckles are badly damaged," the doctor said. Needless to say, ridiculing female victims of domestic violence would have probably got the cartoonist sacked.

Nicholson said the mythology that portrayed men as victims was driving debate over domestic violence, child custody and child support issues. He said there was a common view that men were victimised by the Child Support Scheme, and the myth was at its most extreme with claims that men were as often victims of family violence as they were the perpetrators of it.

But in the days of broadband internet and the miracles of Google, it can take less than a minute for anyone to find references to a substantial body of research to contradict the Chief Justice's claims.

The Age reported Nicholson saying a renewed emphasis on men's rights was fostering, at all costs, an environment of encouraging paternal contact after separation. He went on to detail a case of alleged sexual abuse where the experts had encouraged contact but he had refused to order it.

Justice Nicholson said he favoured children having contact with both parents, but the proposal for a presumption of equal joint custody of children after family break-ups, now being considered by a federal parliamentary committee, would lock couples into maintaining relationships that had ended often because of violence.

The question of why children were losing contact with their fathers cried out for research rather than a parliamentary inquiry with a life of less than six months, he said.

The next day, Thursday the 27th November, The Courier Mail followed with another front page story, this time by their national political correspondent Malcolm Cole, reporting that the Family Court will be stripped of its powers to decide child custody arrangements for separated parents.

The paper went on to say a new mediation tribunal would instead make determinations on how child custody should be shared between the parents. "Lawyers would be removed from the child-custody process, potentially saving tens of thousands of dollars for parties involved," the paper reported.

In spectacular fashion, The Courier Mail detailed government members of the committee returning fire on Justice Nicholson, accusing him of being out of touch with widespread community concern over the operation of his court. It was unprecedented:

"Dickson MP Peter Dutton said the committee had taken evidence from thousands of Australians who were unhappy with the current process.

"There are obvious problems with the Family Court and the way it deals with matters surrounding children at the time of their parents' separation," Mr Dutton said. "My view is that Justice Nicholson's comments have been completely unhelpful and I see Justice Nicholson as part of the problem, not the solution."

Cameron Thompson, the Member for Blair, said Justice Nicholson was "kidding himself" if he believed the system worked properly. "If there was

some hypothesis out there that the Family Law Court and the current system was out of touch, then Alastair Nicholson has proven it," he said.

Mr Thompson said Justice Nicholson was "probably starting, after years of insulation, to feel the winds of change that are blowing through the community over this issue. He's probably getting very defensive, and with very good reason," he said.

Two wings of government were at what turned out to be an entirely phoney war.

As it turned out, Nicholson was the report's strongest supporter.

The forces arrayed against Nicholson and his court bode ill for a calm retirement, which he was apparently finally taking in March 2004.

The Courier's front page story spilled to another headlined: "Many boys don't see their separated dads"; yet another story compounding the problems for the court and mandating reform.

"A quarter of boys whose parents have separated have no contact with their father," the paper began. "And even those who do see their fathers are less likely to seek help and emotional support when they needed it, according to a survey by Kids Help Line."

The first day of summer, and the kitchen just got hotter.

"Judge should go, says MP" was the headline in the Herald Sun on 1 December 2003 which provoked an eddy other coverage.

The paper reported the "bold call" for "the resignation of controversial Family Court Chief Justice Alastair Nicholson" by Victorian Liberal MP Chris Pearce, who claims the judge has tried to interfere in the outcome of a Parliamentary inquiry into child custody.

"It is Justice Nicholson's role to administer the law, not make it," Mr Pearce said.

The Shared Parenting Council of Australia rushed out a supportive press release overnight and by 7.25 the story was on the AAP wire service, going to every significant radio, television and newspaper in the country.

Citing undue influence and inappropriate public comment on the current Federal Parliamentary Inquiry into Child Custody matters, the Chief Justice

has brought an entire judicial institution and a arm of government into disrepute, Geoffrey Greene, Federal Director of the Shared Parenting Council of Australia said.

"We support the claim made by Federal Member for Aston, Chris Pearce, in the Herald Sun today, that the Chief Justice has attempted to pervert the course of a Federal Parliamentary Inquiry through his constant attacks upon the committee, its reference and its members," he said.

"Clearly the Family Court under the stewardship of Alastair Nicholson, has now degenerated into a failed institution with little or no respect from the general public, in either its administration of justice or in its capacity to hear matters before it - without bias or prejudice.

"The public attacks upon the parliamentary inquiry, and his direct opposition to the rights of children of separated parents to continue their relationship with both their mother and father has effectively prevented any party seeking a shared parenting Order in the Family Court from ever receiving a fair trial.

"This is an intolerable situation that the Chief Justice has created and leaves the Attorney-General and the Federal Parliament with little choice but to act immediately, to restore some faith to a judicial arm of government."

The fathers groups, growing progressively more savvy, chimed in with supporting releases. In an open letter to the Prime Minister Men's Confraternity in Western Australia wrote claiming the Chief Justice had attempted to pervert the course of this parliamentary inquiry through his constant attacks upon the committee, its reference and its members.

Reliable Parents described the calls for Nicholson's resignation as "not without foundation". The group said the Family Court system was unworkable and the Chief Justice had bought the Family Court into disrepute. He had undermined public confidence in the court's ability to administer the will of the Parliament, and in doing so, also the will of the people.

Chairman of Reliable Parents Inc, Mr Tony Borger stated that, "the ingrained bias that exists within the Family Court and its' agencies has clearly influenced the Chief Justice and rendered the entire Family Court system unworkable. The Parliamentary inquiry and the steadfast determination of its' Chairperson, Kate(sic) Hull can be credited with having bought to public light the extent to which fathers and their children have been callously disregarded".

Even Fathers4Justice International weighed in with another open letter to the Prime Minister claiming the Family Court had the worst reputation of any court in Australia.

The next day the national daily The Australian ran a story across the top of page two which amplified Pearce's comments, recording him as saying Nicholson's attacks showed a "total lack of regard and respect for the parliamentary process and the parliament's role in developing and legislating the laws of Australia.

"There are clear and distinct roles for the parliament and for the judiciary. It is important that both parliamentarians and members of the judiciary respect that distinction.

"Justice Nicholson's comments demonstrate a clear and worrying failure to respect this important principle."

But the paper quoted Justice Nicholson as saying he refused to resign ahead of his planned retirement in March next year.

"I have no intention of resigning over comments I made during a speech at a family violence forum on the needs of vulnerable and abused children," he told the paper. "I view calls for my resignation by the Victorian MP Chris Pearce, and the Shared Parenting Council of Australia, as an attempt to intimidate me in the carrying out of my duties."

On Friday the 12th December The Australian ran a story that the minimum \$5 a week child support payment extracted from the unemployed would be doubled as part of recommendations from inquiry.

It didn't go down well.

There were a quarter of a million fathers in this situation. This was \$20 a fortnight these poor bastards could be spending on their kids, the last shred of dignity. Oddly even the National Council of Single Mothers and their children criticised the move, referring to the "groundswell of opposition to child support" and saying it would trigger disputes between parents.

But with the December 31st deadline rapidly approaching, the pettiness and blind bureaucratic insanity of it all acted as neat counterpoint to the well of misery that family law and child support represented.

The froth on choppy seas was to cause further in-fighting and shadow boxing in an always disparate and geographically scattered family law reform movement filled with strong and often obsessive characters whose healthy egos and personal encounters with the system led to sometimes difficult and almost always pointless division. There was no tradition or history of easy co-operation between the groups, despite the fact they were largely campaigning

for exactly the same things. Previous attempts to make Lone Fathers the peak body had failed. Keeping them together in even loose alliances was like herding cats.

The creation in February 2003 of the Shared Parenting Council of Australia, with close to 30 affiliated members, was an important step forward in the campaign for family law reform. It gave the media an easy moniker to hang an idea around. As Federal Director Geoffrey Greene, a then unemployed single father of two, brought to an often politically and media-naïve movement a new and articulate voice due to his experience both as a lobbyist and Liberal Party staffer.

The father's groups, which had virtually never had any funding or resources of any kind and were borne simply out of personal grief, rarely put out press releases and rarely had members with even the most rudimentary experience of the media. As a result they had always had problems establishing any real media profile. The veteran of them all, Barry Williams of the Lone Fathers Association, did not, despite all his good heart, present as the most articulate or well educated advocate. He was easily snowed by Canberra's femocracy.

While Michael Green QC, author of *Fathers After Divorce*, was a reasoned and educated voice, he had not until recent times shared the same profile as Williams. Malcolm Mathias, President of the now defunct Fathers For Family Equity, like a number of them a breakaway group from Lone Fathers, was another who toiled nobly in the field over many years trying to provide a passionate but articulate voice when fathers groups were routinely parodied as right wing red necks.

With the confusing array of groups and their vilification over the years, the SPCA gave the media someone else beside Williams they could turn to for a quick quote; a detailed backgrounder or a bit of gossip. Many other groups operated only part time and their volunteers, people who had often never written a media release or been on radio or television in their life and who were caught up with their own jobs and lives and children. Often it came down to the simple fact that Greene was readily available when the media needed him.

As the deadline grew ever closer, almost, it seemed, as part of the pre-report nerves, an unfortunate squabble broke out in the Shared Parenting Council over the question of whether a Tribunal should replace the Family Court, a spat which led to the departure of the Men's Rights Agency.

While majority support was for the abolition of the Family Court and the creation of a tribunal in its place, Sue Price, co-founder of the MRA, put out a public notice on their website saying they did not see the tribunal as a workable solution and claiming that the issue would divert attention from the crux of the matter. She claimed that debate on the issue had been stifled

within the SPCA and that the same people who worked at the Family Court would simply make the dash across the road to the tribunal. She wrote: "The problem is so much greater than just bringing in a new quasi-legal level of adjudication. The solution lies in ensuring the rebuttable presumption of joint custody 50/50 (shared and equal parenting) becomes the accepted norm. Once that is in place we can then start to introduce programs to elevate the status of fathers to ensure all those with a misandrist outlook come to understand the importance of both parents raising their children."

In a separate public statement she claimed that "the recently formed Shared Parenting Council of Australia this week lost the support of a major Australian men's organization."

In announcing her resignation she cited "procedural difficulties".

"The SPCA Executive had not even discussed the Family and Community Affairs Committee latest recommendation to introduce a tribunal system to replace the Family Court's handling of children's issues, yet the Federal Director Geoff Greene was obviously promoting this concept without the authority of the Executive", said Mrs. Price. "Not only did he attempt to stifle debate, but tried to silence criticism of the proposal for fear of "upsetting the committee".

She claimed that "it felt like we belonged to a branch office of the Liberal Party. We do applaud the Government's initiatives, but we feel we must remain non-political in our approach to achieving a better result for parents and their children if their relationships fail."

Greene denied the claims. While the arguments created some consternation or exasperation on the various men's chatlines, the rupture did not receive mainstream media coverage and ultimately did the SPCA little harm.

The unity of the SPCA in putting a respectable mantle onto a disparate group of family law reformers and fathers groups had been a significant factor in breaking down the demonisation of fathers groups. This demonisation had picked up pace since the appearance of a fringe group the Black Shirts in Melbourne the previous year, a group whose paramilitary style outfits and extreme tactics led them promptly to court accompanied by lurid headlines; none painting a redeeming picture of separated fathers. With a cosy fit between left wing journalists, a predominantly female work force in the nation's newsrooms and feminist ideology pumping from numerous taxpayer funded bodies, getting anyone to look beyond vicious stereotypes or bothering to ring anyone besides Barry Williams had long been difficult.

With politicians and lobbyists on holidays for Christmas, there were a couple of particularly strong media pieces in favour of shared parenting and reform.

The strongest of these, appearing on 21st December, when emotions surrounding children were already high, was titled "Children Caught in the Crossfire" and written by David English. It appeared prominently in Queensland's *The Sunday Mail*, which has a healthy circulation of more than 600,000. Like other pieces now beginning to appear, it was written with the assumption that the Family Court was about to be substantially demolished.

The piece began:

"Christmas is looming and millions of divorced Aussie dads are dreading it. It's not creeping credit card debt or even monster hangovers that loom large in their minds. It is the stark realisation that time with their children will be brief and in many cases non-existent."

Noting that 50,000 Australian couples split each year and dramatic change in the way they were treated was on its way, he noted that: "The animosity between the Family Court and the 10-member committee over possible change is palpable as anyone knows who has followed the exchanges of fire in the media between Family Court Chief Justice Alastair Nicholson and committee members in recent weeks."

Only the previous year the debate had often been characterised by a silence, secrecy and a prevailing fear of criticising the Family Court for dread of what vindictive action the court could take.

The fears were well founded, with an established record of the court serving up hostile judgements to its critics. During the course of the inquiry one very prominent advocate received a stinging judgement from the court which removed his children from a shared parenting arrangement which had been in place for a number of years and gave custody to the mother – causing enormous distress to the family involved. The judgement was little more than a sustained character assassination. Around the same period the same judge made a number of attacks on litigants for their involvement in fathers groups.

Now English quoted the Shared Parenting Council of Australia as saying that any rearguard attempt to save the Family Court was doomed: "There is no place in Australian society for an institution that operates in the way the Family Court operates," their spokesman said. "What an indictment it is of the court that the vast majority of Australians want to take it apart."

English also quoted Sue Price of the Men's Rights Agency as saying: "Whatever comes next has got to be better than what we've got."

"I know from the myriad of women mostly second wives we've dealt with that most mums agree that the court has gone overboard against fathers," she said.

English went on to say that the committee had been told loudly and clearly that lawyers and judges should have nothing whatever to do with the process of separation and that "most certainly the Family Court should be stripped of all its powers over custody considerations."

"It has also been given ample evidence that justice in Australia comes at a very high price usually \$100,000 to \$150,000 for a case to go through court - and even then a final decision may not be made."

He went on to quote Liberal committee member Peter Dutton whose electorate is Dickson saying: "The overwhelming message is a need for change. We have had it put to us that the system does not work."

To the end the women's groups were defensive of the court which had for so long reflected their ideology. Totally at odds with virtually everyone else in the country, Yvonne Parry of the National Council for Single Mothers said: "We think the court does a wonderful job in very trying circumstances."

She dismissed the push for change a "a vocal minority who've been pressing the backbenchers for change" and said she saw some of that minority as pretty nasty.

"We've had death threats here since the inquiry was announced," she told The Sunday Mail. "People have sent emails saying they hope we die and they hope our kids die and stuff like that. It's not nice."

Significantly for the Australian push for reform, there were major breakthroughs in the international push for justice in family law. These events helped to illustrate both to policy makers and to fathers that the push for shared parenting was by no means isolated or unreasonable.

One of the world's most powerful newspapers, the downmarket tabloid The Sun in Britain, launched a national campaign in mid-December for 50/50 child custody after separation. While it might not win on intellectual clout, with its multi-million circulation and brash attitude The Sun is one of the few newspapers that can single-handedly change governments and public attitudes.

Declaring that more than one million children in Britain will not see their fathers this Christmas, reporter Martin Phillips announced that The Sun was calling for dads to be given equal rights and that the paper was backing

father-of-four Sir Bob Geldof - who branded the country's family law system as "grotesque" for its failure to maintain links between children and their parents.

Writing for the paper to coincide with the launch of the campaign rock star Bob Geldof said:

"For those divorced men with children, Christmas is a travesty, a repulsive contradiction of a family holiday, of a loving celebration, of a special children's time.

"These are the men who will be forced to be alone without their babies, who will commit suicide most frequently at this time of year in an age when male suicides are already 300 per cent greater than women's.

"These are men who, in the eyes of what is sickeningly called Family Law, committed the greatest crime - of being divorced.

"Men who are guilty of the worst sin - of being fathers - because dads, to the great dismay of the secret elite who sit in secret judgment in these secret courts are, shockingly, ALL men!

"This Christmas Eve...there will be many fathers forbidden by the savagery of our laws to be with their children, standing broken, as I have, outside their old homes, the keys still in their pockets, weeping and whispering goodnight as they watch each child's bedroom light switch off before turning away, maddened with grief, to the pointlessness of a lonely Christmas Day.

"What have we become? In whose name is this brutality done? Who are they who do this and why do they not account to us, the people? What unthinking fools perpetrated these unlawful laws?"

The world of research also seemed to be conspiring to suggest that shared parenting was what children wanted. Writing in the Age and The Sydney Morning Herald reporter on the 21st December Danielle Teutsch, in an article titled "Children from split families want equal time share", said a new study found children of split families would preferred to divide their time equally between their divorced parents.

Teutsch pointed out that the Sydney University study, Adolescents' Views on the Fairness of Parenting and Financial Arrangements After Separation, by Judy Cashmore, Patrick Parkinson and Judi Single from the faculty of law, added weight to Prime Minister John Howard's view that children are better off spending equal time with both parents after divorce.

The study was one of the first in Australia to look at how children feel about spending time with their parents, and money matters, and included 60 teenagers.

Teutsch recorded that when asked how parents should care for children after divorce, the most common answer was "equal" or "half and half". Half also said they wanted more time with their non-residential parents.

Professor Parkinson, one of the court's leading academic apologists, said the results were striking. "It suggests that adolescents are willing to move between homes, at least in principle," he said.

Professor Parkinson said the research suggested the 1970s custody model in which children saw one parent "every second weekend and school holidays" was outdated. The study also found children had an acute sense of fairness in money matters. They did not like it if one parent appeared to have a better standard of living, or if the children from another relationship received bigger Christmas presents, for example.

The mix of Christmas and the impending conclusion of the inquiry propelled conservative columnist at The Australian Janet Albrechtsen to also weigh into the debate. In her columns she had often been an outspoken critic of the Family Court and its Chief Justice Alastair Nicholson, suggesting his frequent international conference hopping made him a fully paid up member of "the international judicial jet set". She had previously condemned the court as ideologically driven and as having overseen the bastardisation of the "best interests of the child" test. The previous year she had written that despite the legislative reforms of 1995 intended to promote shared parenting fathers were continuing to be stripped of a genuine relationship with their children, "all in the name of ideology".

"Sadly," she said, "it is caught downwind of the more illogical parts of feminist thinking that sanctifies the womb as soon as a marriage is over."

Nicholson's views on virtually everything, from domestic violence to shared parenting, were on the record. It frequently raised the question of how any applicant applying, for instance, for a shared parenting order could get a fair trial.

Also that year she condemned Nicholson for his ceaseless public statements, this time on the issue of smacking children, where he called for laws making it a criminal assault. She wrote:

"In making known his position on disciplining children, Nicholson compromises his position as judge. He wants the laws changed to reflect his views."

Elsewhere she wrote “the real victims are children, who may miss out on the best custody outcome because there is no level playing field in the Family Court.”

The placement of these views in the national daily helped demonstrate just how mainstream critics of the Family Court had become.

Christmas Eve 2003 was no different.

Under the headline “Fathers given raw custody deal Albrechtsen wrote:

“Tomorrow, thousands of children will celebrate Christmas away from their fathers. Next week the Standing Committee on Family and Community Affairs will deliver its report on child custody.”

“The juxtaposition of these two facts is a stark reminder that restoring fatherhood could be John Howard's finest legacy to us.

“But it will require a very clear, very loud message to the proverbial men in white coats - the judges of the Family Court - to end the experiment, to start over, to welcome fathers back into the lives of children.

“The social experiment began with the best of intentions. The Family Court, established in 1976, promised a revolutionary system for dealing with family breakdown - one that sought outcomes in “the best interests of the child”.

“But the 1970s were feminism's heyday. And so that message - the best interests of the child - was filtered through a feminist prism where the denigration of men refracted into the belittling of fathers.”

She said the statistics showing the court making a paltry number of shared parenting orders, 329 out of a total 13,000 orders in the financial year 2000-01 for example, “translated into thousands of fatherless children and childless fathers. One million children live with only one parent, usually their mother. Less than half of these children see their other parent, usually their father, at least fortnightly. More than a third see them rarely - once a year or less. Less than half of the fathers have their children stay overnight. And yet 72 per cent of non-resident fathers want more contact and most children want to spend more time with their fathers.”

Janet Albrechtsen said Nicholson was claiming shared parenting to be unworkable where there is parental conflict yet he knew the legal process

based on the victor and the vanquished promoted the very conflict to which shared parenting opponents point.

“There is now too much evidence to ignore the positive outcomes for children who maintain genuine loving relationships with their fathers,” she wrote.

“There is another reason for restoring fatherhood. Every young boy needs to know he is important and that society treats fathers with respect. If fatherhood matters, every young boy matters. A simple message that we ignore at our peril.”

After so much hard work that so many fathers had put in to fighting for reform, including contributing to the inquiry, confronting perhaps the saddest and most private element of the lives and the consequences on their own children of what had happened, some felt sick to the stomach over what could or could not be about happen.

How many fathers dreamed that next Christmas, unlike this one, they would be spending with their children after the government changed the law and gave them their children back?

The eddies of hope, the heightened sensitivities at Christmas, boosted by positive media coverage, all took a great lurch downwards with the publication of a front page story on the Saturday edition of the Daily Telegraph with the brutal headline: “Access Denied”.

So many witnesses had appeared before the inquiry in tears. So many people had worked so hard on so many submissions; and in making sure they were heard at public hearings. The committee had appeared to understand.

It was a brutal slap in the face.

The story by Tory Maguire, which was published in many other News Limited publications around the country, increased the despair levels of just about every family law reformer in the country. It began: “Separated parents are unlikely to get automatic 50/50 joint custody of their children as a House of Representatives committee prepares to reject the proposal...the committee, which hands down its report on Monday, is likely to unanimously reject ordering that a child's time be automatically split evenly between separated parents.”

Maguire went on to say “the rejection of 50/50 joint custody will disappoint fathers' advocates, who have argued that the present system is stacked against them.” It was a massive understatement.

He went on to suggest the inquiry “will propose "significant changes" to the Family Law Act, which could include the introduction of a special tribunal to decide custody outside the courts. There will be other suggestions for involving both parents in a child's upbringing, including radical overhauls of the way child maintenance is paid and the consideration of grandparents in 'parenting plans.' ”

Maguire went on to say that other suggestions likely to be made include financial penalties for parents who restricted the access of non-custodial parents to their children. “The possible tribunal to decide custody would include child psychologists and legal experts, and parties would not require legal representation,” he wrote.

But of course it was the “legal experts” who had contributed to the present unholy mess; and the systemically corrupt conduct of child psychologists in family law was one of its major problems, as more than one submission to the inquiry had pointed out.

It was the same unworkable platitudinous rubbish everyone had seen before. It meant, in cold blood, that without a rebuttable notion of shared parenting nothing would really change, that the government had just spent millions of dollars stirring up passions over child custody and child support, encouraged countless thousands of fathers who did not get to see their children to hope that things would change, and were not only not going to do anything to improve the lot of them and their children, but was feasibly about to make things worse.

Lone Fathers' Association president Barry Williams said he would be "very unhappy" with anything less than "shared parenting". Others were in equal dismay. "I don't think anything but compulsory shared parenting is acceptable."

And so Monday 29th December 2003 rolled on. Unusually for a committee report, the report was released at 10.30am exactly, with a press conference called for one hour later. It was to be a day of judgement and despair.

What so many had hoped would be an historic day when the nation's children were given back their fathers turned out to be bureaucratic and political obfuscation at its very worst.