

A discussion paper issued by the Australian Government in November 2004 outlines a reform strategy aimed at promoting the continued involvement of both parents in their children's lives following separation, diverting families away from the courts, and reducing the adversarial nature of legal disputes over children.

Shared parenting and family law reform: The next instalment



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Eleven months after the release of the report by the Parliamentary Committee of Inquiry into child custody arrangements in the event of separation (Commonwealth of Australia 2003), the government announced a two-month period of community consultation on its proposed reforms to the broader family law system.

On 10 November 2004 the Attorney General's Department issued a discussion paper outlining a reform strategy aimed at promoting the continued involvement of both parents in their children's lives following separation, diverting families away from the courts, and reducing the adversarial nature of legal disputes over children (Commonwealth of Australia 2004b).

The discussion paper contains few surprises, mirroring as it does the "framework statement" (Commonwealth of Australia 2004a) released by the Prime Minister on 29 July 2004. Submissions on the discussion paper were invited up until the deadline of 14 January 2005.

What follows is a brief summary of the proposed changes as they relate to the broader family law system, the courts and the Child Support Agency in particular, and the provisions of the *Family Law Act 1975*.

Broad systemic changes

Perhaps the most significant structural reform to be adopted from the Committee's 29 recommendations is the establishment, over a three-year period, of 65 Family Relationship Centres providing a national, single-entry point into the family law system for separating parents.

The Government has avoided the more expensive and legally fraught option of creating an alternative decision-making body – that is, a tribunal, as recommended by the Committee. Instead, investment in Family Relationship Centres is hoped to provide an opportunity to divert potential litigants into more family-friendly dispute resolution services such as mediation and counselling.

It is anticipated that the proposed Family Relationship Centres will be run from existing community organisations and will fulfil a number of functions. Their primary purpose will be to assist parents following separation by the provision of information and referrals (with screening for the presence of violence and abuse), running seminars on issues relevant to separation, and providing up to three hours of free mediation. "Parenting Advisers" will be available to assist parents, individually or jointly, to negotiate initial arrangements for their children or to resolve disputes about existing arrangements that may otherwise require legal action. As well as services directed at separating parents, it is intended that the Centres will also provide pre-marriage and relationship counselling.

The use of parenting plans is an important aspect of this reform package. However, it appears from the discussion paper that it is not intended that agreements recorded in this way will necessarily be made enforceable via registration with the court.

Another essential component of the reform agenda is the plan to boost the capacity of existing community organisations currently providing services to families. The Government's commitment in this regard has been evidenced by the announcement in July 2004 of an injection of \$15 million top-up funding to approved Family and Relationships Services Program organisations. Funding for the expansion of services such as the Children's Contact Services, and the Contact Orders Programs, designed to assist highly conflicted couples to resolve disputes about children, has also been promised.

Legislative changes

The discussion paper foreshadows extensive amendments to the *Family Law Act 1975*. The Government has accepted the Committee's advice against introducing a rebuttable presumption for 50/50 parenting time, but rather proposes creating a legal presumption for "shared parental responsibility" or mutual involvement of parents in key decisions concerning a child's future (generally characterised as, but not limited to, decisions about health, religion and education). As an additional safeguard, it is proposed that there be a presumption *against* shared parental responsibility where there is evidence of "violence, child abuse or entrenched conflict".

The paper proposes yet another change to terminology in Part VII of the *Family Law Act 1975*, with the replacement of the terms "residence", "contact" and "specific orders" with the single term "parenting order". It also anticipates amendments to the objects and principles section of the Act, suggesting that the attitude of one parent to the child's contact with the other parent should be listed as a factor to be considered by the court when determining what is in the best interests of the child.

Amendments would also be required to make it mandatory for those wanting to make an application to the court in a new matter or to enforce an existing order, to first attempt a primary dispute resolution process (unless the presence of violence or abuse means such a course of action is not viable). Use of the services provided by the new Family Relationship Centres would satisfy this requirement.

The paper also proposes a number of changes to the provisions in the Act relating to enforcement of contact orders. One suggestion is that where there has been more than one deliberate and intentional breach of orders, the court should be required to consider changing the child's living arrangements. Although said to be subject to the "best interests" principle, the introduction of a criterion that relates more to the punishment of the obstructive parent than the needs of the child may raise some concerns.

Changes to the courts

Rather than the radical restructuring of the court system suggested by the Committee, the Government plans instead to introduce measures to moderate the adversarial culture of existing court processes. If these reforms are implemented, certain characteristics of the Children's Cases Project, an initiative currently being piloted at the Sydney and Parramatta registries of the Family Court of Australia, are likely to become standard procedure in children's matters.

Judges would perform a more investigative and directive function in proceedings and would have the power to suspend the operation of the rules of evidence. It is proposed that judges have the ability to "directly seek the views of a child" where appropriate, and would work more closely with a court-based counsellor or mediator throughout proceedings. The only anticipated change to court hierarchy is the plan to combine the registries of Family Court and the Federal Magistrates Court. Both courts would be expected to develop a close working relationship with the new Family Relationship Centres.

Child support

While declining to act on the Committee's recommendations for immediate changes to the Child Support Formula, the Government has instead taken up the suggestion to establish a Ministerial Taskforce to review the operation of the scheme as a whole. The taskforce was established on 16 August 2004 and is scheduled to report by March 2005. The Australian Institute of Family Studies is represented on the Taskforce by Bruce Smyth, of the Institute's Marriage and Family research program.

Conclusion

In following the recommendations of the Committee so closely, the discussion paper could be seen as a strong endorsement by the Government of the work of the Committee. It is also largely consistent with the 2001 findings of the Family Law Pathways Advisory Group.

There are a number of exciting developments in these reforms that have the potential to make a real difference to families experiencing the difficult life transition of parental separation. The proposed Family Relationship Centres are in many ways the fruit of decades of work in the provision of services to families in the community sector.

The beauty of the Family Relationship Centre network is that for the first time there will be one easily identifiable and accessible point of contact for information and professional assistance, both in the early stages of the separation and as subsequent disputes arise as the circumstances and needs of family members change. They also provide the opportunity to establish a uniform screening and referral process that may help achieve the coordination of services that the Committee and the Family Law Pathways Advisory Group found to be so lacking. By acting as both the emergency room and the triage of family breakdown (Parkinson 2004), they may well achieve their goal of diverting a significant number of matters away from litigation, while at the same time ensuring that the complex and difficult cases get the assistance they require.

However, the effectiveness of these Centres will depend on continued adequate resourcing, the skill and expertise of their staff, and the effectiveness of the community education campaign to promote their use.

References

- Commonwealth of Australia (2003), *Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the Event of Family Separation*, House of Representatives Standing Committee on Family and Community Affairs, Canberra.
- Commonwealth of Australia (2004a), *Framework Statement on Reforms to the Family Law System*, Prime Minister's Department, Canberra.
- Commonwealth of Australia (2004b), *A New Approach to the Family Law System: Implementation of Reforms*, Attorney-General's Department, Canberra.
- Parkinson, P. (2004), "Family Relationship Centres", Paper presented at the Family Court Conference, Brisbane, September.

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For a detailed discussion of Family Relationship Centres, see Moloney and Smyth elsewhere in this issue of *Family Matters*.